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Government of West Bengal

Legislative Department

The West Bengal Code

Second edition

In Eight Volumes

Volume IV

Bengal Acts, 1920 to 1935

and

The Bengal Criminal Law Amendment Act, 1925

(As modified up to the 30th November, 1963.)

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1964

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PREFACE

This, the fourth volume of the Second Edition of the West Bengal Code, contains such of the Bengal Acts of the years 1920 to 1935 and the Bengal Criminal Law Amendment Act, 1925, as are now in force in the State of West Bengal or in any part thereof.

Calcutta,
The 30th November, 1963.

S. Sen Gupta,
Secretary to the Government of West Bengal,
Legislative Department. . .

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¹No number was given to this Act.

The West Bengal Code

Volume IV

PART I.—BENGAL ACTS, 1920 TO 1935.

Bengal Act I of 1920

THE BENGAL CRUELTY TO ANIMALS ACT, 1920.

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The Bengal Cruelty to Animals Act, 1920.

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Bengal Act I of 1920

[The Bengal Cruelty to Animals Act 1920.]¹

AMENDED	Ben. Act VII of 1926. Ben. Act I of 1938. Ben. Act I of 1939.
ADAPTED				(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950. (25th February, 1920).*

An Act to consolidate and amend the law relating to the prevention of cruelty to animals in Bengal.

WHEREAS it is expedient to consolidate and amend the law relating to the prevention of cruelty to animals in Bengal ;

It is hereby enacted as follows :—

Preliminary.

1. (1) This Act may be called the Bengal Cruelty to Animals Act, 1920.

Short title,
commence-
ment
and extent.

(2) It shall come into force on such date^a as the ^a[State Government] may, by notification, direct.

(3) Except as otherwise hereinafter provided, this Act shall extend only to Calcutta ; but it may be extended by the ^a[State Government], by notification, to any other town or place.

2. (1) The following enactments,

Repeal.

(a) the Bengal Cruelty to Animals Act, 1869 ;

(b) the Bengal Cruelty to Animals (Arrest) Act, 1869 ; and

(c) the Bengal Cruelty to Animals Act, 1900

Ben. Act I
of 1869.
Ben. Act
III of 1869.
Ben. Act
III of 1900.

shall be deemed to be repealed—

(i) in Calcutta, from the date of the commencement of this Act, and

^aFor Statement of Objects and Reasons, see the *Calcutta Gazette* of 1919, Pt. IV, page 189 ; and for Proceedings in Council, see *ibid.*, Pt. IVA, pages 1181, 1182, and page 1929 and pages 1413-1414, and see the *Calcutta Gazette* of 1920, Pt. IVA, pages 49-55.

^aThis Act came into force on the 1st October, 1920, vide Notification No. 4982Pl., dated the 24th September, 1920, published in the *Calcutta Gazette* of 1920, Pt. I, page 1484.

^aThe words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Provincial" was substituted for the word "Provincial" by paragraph 4(1) of Laws Order, 1950.

The Bengal Cruelty to Animals Act, 1920.

[Ben. Act I

(Preliminary.—Offences.—Sections 3, 4.)

(ii) in any other town or place to which this Act may hereafter be extended under section 1, sub-section (3), from the date of such extension.

(2) Such repeal shall not affect the validity of anything done or suffered, or of any obligation or liability which may have accrued, under any of the said Acts; and all penalties incurred and other things duly done under any of the said Acts shall, so far as they are consistent with this Act, be deemed to have been respectively incurred or done hereunder.

(3) All proceedings pending under any of the said Acts, in Calcutta or in any other town or place, at the date when this Act comes into operation therein, shall be deemed to have been commenced under this Act.

Definitions,

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) “animal” means any domestic or captured animal;

¹(2) “Calcutta” means the area defined in clause (11) of section 3 of the Calcutta Municipal Act, 1923;

(3) “the Corporation” means the Corporation of Calcutta; and

(4) “notification” means a notification published in the ²[Official Gazette].

Ben. Act
III of 1923.

Offences.

4. If any person—

(a) overdrives, cruelly or unnecessarily beats, or otherwise ill-treats any animal, or

(b) binds, keeps or carries any animal in such a manner or position as to subject the animal to unnecessary pain or suffering, or

(c) offers, exposes or has in his possession for sale any live animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment, or any dead animal which he has reason to believe to have been killed in an unnecessarily cruel manner,

he shall be punished for every such offence with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

¹Clause (2) was substituted for the original clause by sec. 2 of the Bengal Cruelty to Animals (Amendment) Act, 1926 (Ben. Act VII of 1926). The Calcutta Municipal Act, 1923 (Ben. Act III of 1923) was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951) and this reference should now be construed as a reference to cl. (12) of sec. 5 of the latter Act.

²These words were substituted for the words “Calcutta Gazette” by paragraph 4 (2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Penalty
for cruelty
to animals
and for
sale of
animals
killed with
unneces-
sary
cruelty.

of 1920.]

(Offences.—Sections 5—6B.)

5. If any person overloads any animal he shall be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both, and

Penalty for overloading animals.

(1) if the owner of that animal, and

(2) if any person who, as a trader, carrier or contractor, or who, in virtue of his employment by a trader, carrier or contractor, is in possession of that animal or in control over the loading of it,

permits such overloading, he shall be punished with fine which may extend to one hundred rupees.

Explanation.—For the purposes of this section an owner or other person referred to in clauses (1) and (2) above shall be deemed to have permitted overloading if he shall have failed to exercise reasonable care and supervision in respect of the protection of the animal therefrom.

6. If any person performs upon any cow or other milch animal the operation called *phuka* he ¹[shall be deemed to have committed a cognizable offence and,] shall be punished with fine which may extend to ²[five] hundred rupees, or with imprisonment for a term which may extend to ³[two years], or with both, and the owner of the cow or other milch animal and any person in possession of or control over it shall be liable to the same punishment ⁴[and the cow or the milch animal on which the operation of *phuka* was performed shall be forfeited to Government :]

Penalty for practising *phuka*.

⁵Provided that in the case of a second or subsequent conviction of a person under this section, such person shall be punished both with fine which may extend to five hundred rupees and with imprisonment which may extend to two years.

⁶6A. A portion of the fine if realized from the person convicted under section 6 may be given to the person whose information led to the detection of the crime against section 6.

Disposal of portion of fine.

⁶6B. It shall be lawful for the Corporation of Calcutta or the Commissioners of a Municipality in towns or places where this Act applies to refuse to grant or renew licenses for cattle-sheds in buildings with boundary walls or when granting or renewing such

Condition for granting licenses for cattle-sheds.

¹These words were inserted by sec. 2 of the Bengal Cruelty to Animals (Amendment) Act, 1938 (Ben. Act I of 1938).

²This word was substituted for the words "two", *ibid*.

³These words were substituted for the words "six months" *ibid*.

⁴These words were added, *ibid*.

⁵This proviso was added, *ibid*.

⁶Sections 6A and 6B were inserted by sec. 3, *ibid*.

(Offences.—Sections 7—10.)

to insist upon the licensees to keep the cattle-sheds open on all sides to facilitate the detection of any offence against section 6.

Penalty
for killing
animals
with unne-
cessary
cruelty.

7. If any person kills any animal in an unnecessarily cruel manner he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months, or with both :

Provided that nothing in this section shall render it an offence to kill any animal in a manner required by the religion or religious rites and usages of any race, sect, tribe or class, or for any *bona fide* scientific purpose or for the preparation of any medicinal drug.

Penalty
for being
in posses-
sion of
the skin
of a goat
killed with
unneces-
sary
cruelty.

8. If any person has in his possession the skin of a goat, and has reason to believe that the goat has been killed in an unnecessarily cruel manner so as to constitute an offence under section 7, he shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both, and the skin shall be confiscated.

Presump-
tions as to
possession
of the skin
of a goat.

9. (1) If any person is charged with the offence of killing a goat contrary to the provisions of section 7, and it is proved that such person had in his possession, after the offence was alleged to have been committed, the skin of a goat with any part of the skin of the head attached thereto, it shall be presumed, until the contrary be proved, that such goat was killed in an unnecessarily cruel manner.

(2) If any person is charged with an offence against section 8, and it is proved that such person had in his possession, at the time of the alleged offence, the skin of a goat with any part of the skin of the head attached thereto, it shall be presumed, until the contrary be proved, that such goat was killed in an unnecessarily cruel manner, and that the person in possession of such skin had reason so to believe.

Penalty
for un-
neces-
sarily
employing
animals
for
labour.

10. If any person employs in any work or labour any animal which by reason of any disease, infirmity, wound, sore or other cause is unfit to be so employed, he shall be punished with fine which may extend to one hundred rupees, and

(1) if the owner of that animal, and

(2) if any person who, as a trader, carrier or contractor, or who, in virtue of his employment by a trader, carrier or contractor, is in possession of that animal or in control over the employment of it,

permits such employment, he shall be liable to the same punishment.

of 1920.]

(*Offences.—Weighbridges and Infirmarys.—Sections 11—13.*)

Explanation.—For the purposes of this section an owner or other person referred to in clauses (1) and (2) above shall be deemed to have permitted such employment if he shall have failed to exercise reasonable care and supervision in respect of the protection of the animal therefrom.

11. If any person—

- (a) incites any animal to fight, or
- (b) baits any animal, or
- (c) aids or abets any one in such incitement or baiting,

Penalty for baiting animals, or inciting them to fight.

he shall be punished with fine which may extend to fifty rupees.

12. If any person wilfully allows any animal of which he is the owner or of which he is in charge to go at large in any public place while the animal is affected with contagious or infectious disease, or without reasonable excuse, allows any diseased or disabled animal of which he is the owner or of which he is in charge to go at large or die in any public place, he shall be punished with fine which may extend to one hundred rupees.

Penalty for allowing diseased animals to go at large or to die in public places.

¹12A. If any person employs a buffalo for draught purposes between such hours during such period as may be prescribed he shall be punished for every such offence with fine which may extend to fifty rupees.

Penalty for working buffaloes during prohibited period.

Weighbridges and Infirmarys.

13. (1) The ²[State Government] may appoint the places at which weighbridges shall be established for the detection of cases of overloading of animals, and may also declare, by notification, the limits of the areas for which such weighbridges are established.

Weighbridges.

(2) The ²[State Government] may erect weighbridges at the place so appointed, and may acquire, by purchase or otherwise, existing weighbridges erected by any person and maintain them for the purposes of sub-section (1).

¹Section 12A was inserted by sec. 8 of the Bengal Cruelty to Animals (Amendment) Act, 1926 (Ben. Act VII of 1926).

²See foot-note 8 on page 8, ante.

(Weighbridges and Infirmaries.—Sections 14—18.)

Infirmaries.

14. The ¹[State Government] may, by general or special order, appoint places to be infirmaries for the treatment and care of animals in respect of which offences against this Act are believed to have been committed.

Power of
State
Government
to
appoint
Veterinary
Inspectors
and weigh-
bridge-
officers.

15. The ¹[State Government] may appoint such persons as ²[it thinks] fit,—

(a) to be Veterinary Inspectors for carrying into effect the provisions of this Act, and may declare the areas within which such officers shall exercise their powers under this Act and the areas of which they shall be in charge ;

(b) to be weighbridge-officers to have charge of any weighbridge or weighbridges established under section 13.

Animal,
etc., to
be taken
to weigh-
bridge in
case of
overload-
ing.

16. Within the limits of any area for which a weighbridge has been established under section 13, any police-officer, or any other person duly authorized by the ¹[State Government] in this behalf, who has reason to believe that an offence against section 5 is being committed in respect of any animal, shall seize and take it, together with its load and the person in charge of the animal, to such weighbridge, and shall cause the load to be weighed on the weighbridge in the presence of such person.

Excess
load to be
removed
in cases
of over-
loading.

17. (1) If the weighbridge-officer is not satisfied that an offence against section 5 has been committed, he shall inform the police-officer or person who seized the animal accordingly, and that officer or person shall forthwith release the animal and load.

(2) If the weighbridge-officer is satisfied that an offence against section 5 has been committed, he shall cause the excess load to be removed.

Unfit ani-
mal to be
sent to
Veterinary
Inspector.

18. Any police-officer or any other person duly authorized by the ¹[State Government] in this behalf, who has reason to believe that an offence against section 10 is being committed in respect of any animal, shall seize and take it, together with its load, if any, and the person in charge of the animal, to the weighbridge, if any, appointed for the area, within which such seizure is made, or, in the case of there being no weighbridge appointed for the area, to the nearest police-station, and shall remove the load forthwith and report the fact of such seizure to the Veterinary Inspector in charge of that area.

¹See foot-note 3 on page 8, ante.

²Substituted for the words "they think" by para. 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1947.

The Bengal Cruelty to Animals Act, 1920.

of 1920.]

(Weighbridges and Infirmaries.—Section 19.)

19. (1) Any excess load removed from an animal under section 17, sub-section (2), and any load which was being carried by an animal seized under section 18, and taken to the weighbridge, shall be kept by the weighbridge-officer, at the risk of the owner of such load, at the weighbridge, or at any other place appointed by the ¹[State Government] for the purpose, and, ²[the weighbridge-officer shall by written notice direct the owner of the load to remove it from the weighbridge within a period to be specified in such notice].

Excess load to be treated as unclaimed property in certain circumstances.

³(1a) At any time before the expiration of the period referred to in sub-section (1) the owner of the load may remove it free of charge from the weighbridge.

⁴(1b) The weighbridge-officer may, at the request of the owner of the load referred to in sub-section (1), forward the load to its destination on payment by the owner of all costs incurred or liable to be incurred in its removal, detention and forwarding.

⁵(1c) If the load is not removed from the weighbridge within the period referred to in sub-section (1) it shall be made over by the weighbridge-officer to the police or any person duly authorised by the ¹[State Government] in this behalf.

(2) Any load which was being carried by an animal seized under section 18 and taken to a police-station, shall be kept by the officer in charge of the police-station, at the police-station, or at any other place appointed by the ¹[State Government] for this purpose. The said load shall be kept during the first forty-eight hours of such detention at the risk of the owner thereof, and he may remove the same during that period ⁴[free of charge].

(3) ⁵(a) The officer in charge of the police-station or the person authorised under sub-section (1), in the case of any load made over to him by the weighbridge-officer, and

(b) the officer in charge of the police-station, in the case of any load kept by him under sub-section (2) which has not been removed by the owner within forty-eight hours,

shall enter, in a register to be kept for the purpose, such particulars of the load as may be prescribed by rules made under

¹See foot-note 8 on page 8, *ante*.

²These words were substituted for the words beginning with "if not removed" and ending with "police-station" by sec. 4(1) of the Bengal Cruelty to Animals (Amendment) Act, 1936 (Ben. Act VII of 1936).

³Sub-sections (1a), (1b) and (1c) were inserted by sec 4 (2), *ibid*.

⁴These words were added by sec 4 (3), *ibid*.

⁵These words within square brackets were substituted for the words beginning with "The Officer in charge of the police-station" and ending with "forty-eight hours" by sec. 4 (4) (a), *ibid*.

[Ben. Act I

(Weighbridges and Infirmaries.—Sections 20, 21.)

section 29, and the load shall thereafter be returned to the person who proves to the satisfaction of the Commissioner of Police ¹[or the person authorised by the State Government in this behalf] that the same belongs to him, on payment of all costs incurred in the removal and detention of such load :

Provided that if the load, or any part thereof, consisted of articles which are subject to speedy and natural decay, or consists of livestock, that load, or part thereof, may forthwith be sold or otherwise disposed of under the orders of the Commissioner of Police ²[or the person authorised by the State Government in this behalf] in accordance with rules made under section 29 ; and, the sale-proceeds, after deducting therefrom all expenses incurred in the removal, detention and sale of the entire load, shall be made over to the owner, on proof of his ownership, within six months from the date of entry in the register.

³(4) All costs for the removal, detention and forwarding of all loads under this section shall be payable by the owner of the goods according to such scale of rates as the ⁴[State Government] may prescribe by rules made under section 29.

Disposal
of sale-
proceeds.

20. If within six months from the date of entry in the register no person satisfies the Commissioner of Police ⁵[or the person authorised under sub-section (3) of section 19] that he is the owner of the load, the Commissioner ⁶[or the person authorised, as the case may be] may cause it to be sold or otherwise disposed of in accordance with rules made under section 29, and the proceeds of the sale under this section, or of the sale under the proviso to sub-section (3) of section 19, after deducting therefrom all expenses, shall be applied in such manner as the ⁷[State Government] may prescribe by rules made under section 29.

Produc-
tion of
animal for
examina-
tion by
Veterinary
Inspector.

21. (1) Any police-officer, or any other person duly authorised by the ⁸[State Government] in this behalf, who has reason to believe that an offence against this Act has been or is being committed in respect of any animal, may, if the circumstances so require, seize the animal and produce the same for examination by the Veterinary Inspector in charge of the area in which the animal is seized.

¹The words "or the person authorised by the Local Government in this behalf" were originally inserted by sec. 4 (4) (b) of the Bengal Cruelty to Animals (Amendment) Act, 1926 (Ben. Act VII of 1926); subsequently, the words "Provincial Government" were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

²Sub-section (4) was added by sec. 4(5) of the Bengal Cruelty to Animals (Amendment) Act, 1926 (Ben. Act VII of 1926).

³See foot-note 3 on page 8, ante.

⁴These words, brackets and figures were inserted by sec. 5(1) of the Bengal Cruelty to Animals (Amendment) Act, 1926 (Ben. Act VII of 1926).

⁵These words were inserted by sec. 5(1), *ibid.*

of 1920.]

(Weighbridges and Infirmaries.—Sections 22—24.)

(2) The police-officer or person who seizes any animal under sub-section (1) may require the person in charge of the animal to accompany it to the place of examination.

22. (1) For the purposes of the examination of an animal sent to a Veterinary Inspector in accordance with the provisions of section 21, he may submit the animal to any test which the ¹[State Government] may prescribe by rules made under section 29.

Examina-
tion of
animals
by Veteri-
nary In-
spector.

(2) If on such examination, the Veterinary Inspector is of opinion that the animal is unfit to be employed on the work of labour on which it was employed at the time of its seizure, he shall either send the animal for treatment and care to an infirmary appointed under section 14, and inform the owner of the animal of his having done so, or (if he considers that a prosecution is necessary, or if the owner of the animal so elects) direct the prosecution of the offender and produce the animal before the Magistrate.

23. The Magistrate before whom a prosecution for any offence under this Act has been instituted may, if he thinks fit, direct that the animal, in respect of which the offence is alleged or proved to have been committed shall be sent for treatment and care to an infirmary appointed under section 14.

Power of
Magistrate
to send
animal to
infirmary.

24. (1) When any animal has been sent to an infirmary in accordance with the provisions of section 22, sub-section (2), or of section 23, it shall be detained there until, in the opinion of the officer in charge of the infirmary, it is cured, or again fit for the work or labour on which it is the intention of the owner to employ it.

Detention
and cost of
treat-
ment of
animals at
infirmaries.

(2) The cost of the treatment, feeding and watering of the animal in the infirmary shall be payable by the owner of the animal, according to such scale of rates as the ¹[State Government] may prescribe.

(3) If the owner refuses or neglects to pay such cost, or to remove the animal within such time as the officer in charge of the infirmary may prescribe, that officer may direct that the animal be sold and the proceeds of the sale be applied to the payment of such cost.

(4) The surplus, if any, of the proceeds of the sale shall, on application to be made by the owner within two months after the date of the sale, be paid to him; but the owner shall not be liable to make any payment in excess of the proceeds of the sale.

¹See foot-note 3 on page 3, ante.

[Ben. Act I

(Weighbridges and Infirmaries.—Procedure.—Sections 25, 26.)

(5) If no application is made by the owner for the surplus sale-proceeds within the period prescribed under sub-section (4), these proceeds shall be applied in such manner as the ¹[State Government] may prescribe by rules made under section 29.

(6) If an animal cannot be sold under sub-section (3) the officer in charge of the infirmary may dispose of it in such manner as the ¹[State Government] may prescribe by rules made under section 29.

Destruction of suffering or unfit animals.

25. (1) When any Magistrate, the Commissioner of Police, or any Deputy Commissioner of Police has reason to believe that an offence against this Act has been committed in respect of any animal, the Magistrate, Commissioner of Police or Deputy Commissioner of Police may direct the immediate destruction of the animal, if, in his opinion, its physical condition is such as to render such a direction proper.

(2) When any animal is sent to an infirmary in accordance with the provisions of section 22, sub-section (2), or of section 23, the officer in charge of the infirmary may direct the immediate destruction of the animal, if, in his opinion, its physical condition is such as to render such direction proper, or if he considers it to be permanently unfit for work by reason of old age or some incurable disease :

Provided that no order directing destruction shall be made in respect of any bull, bullock or cow which is unfit for work by reason only of old age.

(3) Any police-officer who finds any animal so diseased, or so severely injured, or in such a physical condition, that it cannot without cruelty be removed, shall, if the owner is absent or refuses to consent to the destruction of the animal, at once summon the Veterinary Inspector in charge of the area in which the animal is found and, if the Veterinary Inspector certifies that the animal is mortally injured, or so severely injured or so diseased, or in such a physical condition, that it is cruel to keep it alive, the police-officer may, without the consent of the owner, kill the animal or cause it to be killed.

Procedure.

Arrest of offenders.

26. (1) Any police-officer may arrest without a warrant any person committing in his view any offence against this Act, or any person against whom he has received credible information of having committed an offence against this Act, if the name and address of the accused person is unknown to the officer, and if such person, on demand, declines to give his name and address or gives a name and address which such officer has reason to believe to be false.

¹ See foot note 3 on page 3, ante.

of 1920.]

(Procedure.—Rules.—Sections 27—29.)

(2) When the true name and address of a person arrested under sub-section (1) have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required :

Provided that if such person is not resident in ^{1*} India, the bond shall be secured by a surety or sureties resident in India.

(3) If the true name and address of such person is not ascertained within twenty-four hours from the time of arrest, or if he fails to execute the bond, or if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

27. If a police-officer, not below the rank of Sub-Inspector, has reason to believe that an offence against section 7 in respect of a goat is being or is about to be, or has been, committed in any place, or that any person has in his possession the skin of a goat with any part of the skin of the head attached thereto, he may enter and search such place or any place in which he has reason to believe any such skin to be, and may seize any such skin and any article or thing used or intended to be used in the commission of such offence.

Special power of search and seizure in respect of certain offences.

28. (1) If a Presidency Magistrate, a Magistrate of the first class, the Commissioner of Police or a Deputy Commissioner of Police, upon information in writing and after such inquiry as he thinks necessary, has reason to believe that an offence against section 6, section 7 or section 10 is being or is about to be, or has been, committed in any place, he may, at any time by day or by night, without notice, either himself enter and search, or, by his warrant, authorize any police-officer above the rank of a constable to enter and search, the place.

Search warrants.

Act V of 1898.

(2) The provisions of the Code of Criminal Procedure, 1898, relating to searches under that Code shall, so far as those provisions can be made applicable, apply to a search made under sub-section (1) or under section 27.

Rules.

29. (1) The ²[State Government] may, from time to time, make rules to carry out the purposes of this Act.

Power of State Government to make rules.

¹The word "British" was omitted by paragraph 8 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1960.

²See foot-note 3 on page 8, *ante*.

(Miscellaneous.—Section 30.)

(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[State Government] may make rules—

- (a) prescribing the maximum weight of the loads to be carried on or drawn by animals ;
- (b) for preventing the overcrowding of animals ;
- ²(bb) prescribing the period during which and hours between which buffaloes shall not be used for draught purposes ;
- (c) for regulating the use of tests and the manner of examination of animals ;
- (d) prescribing the qualifications of persons to be appointed to be Veterinary Inspectors and weighbridge-officers ;
- (e) prescribing the procedure to be followed after removal of a load under section 17, sub-section (2), or under section 18 ;
- (f) prescribing the particulars to be entered in the register maintained under section 19, sub-section (3) ;
- (g) prescribing such other forms or registers as may be required for carrying out the purposes of this Act ;
- (h) for carrying out the provisions of the proviso to sub-section (3) of section 19 and of section 20 in regard to the disposal of loads ;
- ³(hh) prescribing the scale of rates of all costs and charges payable under section 19 ;
- (i) prescribing the manner in which fines realized under this Act and sale-proceeds realized under section 20 and section 24, sub-section (5), shall be applied ;
- (j) for carrying out the provisions of section 24, sub-section (6), in regard to the disposal of animals ; and
- (k) for regulating the destruction of animals under section 25.

Miscellaneous.

30. The ¹[State Government] may delegate, under such restrictions as ⁴[it considers] fit, any of the powers conferred upon ⁵[it] by sections 13, 14, 15, 16, 18, 19, 21 and 24, sub-section (2), of this Act to any person or local authority.

Delegation
of
powers.

¹See foot-note 3 on page 8, ante.

²Clause (bb) was inserted by sec. 6 (1) of the Bengal Cruelty to Animals (Amendment) Act, 1926 (Ben. Act VII of 1926).

³Clause (hh) was inserted by sec. 6 (2) *ibid.*

⁴These words were substituted for the words "they consider" by paragraph 5 (a) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵This word was substituted for the word "them", *ibid.*

of 1920.]

(Miscellaneous.—Sections 31—36.)

31. Every appointment made by a local authority under section 15, in exercise of the power delegated to it under section 30, shall be deemed to be an appointment made under the Act by which such local authority is constituted.

Appoint-
ments
made by
local
authority.

32. A prosecution for an offence against this Act shall not be instituted after the expiration of three months from the date of the commission of such offence.

Limitation
of time for
prosecu-
tions.

Act XLV
of 1860.

33. Every person appointed under section 15, 16, 18 or 21 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Persons
appointed
under sec-
tions 15,
16, 18 or 21
to be pub-
lic ser-
vants.

34. No suit, prosecution or other legal proceeding shall lie against any person who is, or who has been declared to be, a public servant within the meaning of section 21 of the Indian Penal Code for anything which is, in good faith, done or intended to be done under this Act.

Indem-
nity.

Ben. Act
III of
1923.
Ben. Act
XV of
1932.
Ben. Act
III of
1885.

35. Notwithstanding anything contained in ¹[the Calcutta Municipal Act, 1923], the Bengal Municipal Act, ²[1932], or the Bengal Local Self-Government Act of 1885, the Corporation, the Commissioners of a Municipality or the District Board may provide from the funds at their disposal such sums as may be necessary for paying the expenses incidental to the exercise of any of the powers delegated to them under section 30,

Power
of local
authority
to pay
certain
expenses.

36. Whenever this Act is extended to any town or place outside Calcutta, under section 1, sub-section (3), the ³[State Government] may, by notification, appoint persons, either by name or by official designation, to exercise and perform in such town or place the same powers and duties as are conferred or imposed by this Act on the Commissioner of Police.

Effect
when Act
is extend-
ed outside
Calcutta.

¹These words and figures were substituted for the words and figures "the Calcutta Municipal Act, 1899" by sec 7 of the Bengal Cruelty to Animals (Amendment) Act, 1926 (Ben. Act VII of 1926).

The Calcutta Municipal Act, 1923 (Ben. Act III of 1923) was repealed and reenacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951) and this reference should now be construed as a reference to the latter Act.

²These figures were substituted for the figures "1884" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

³See foot-note 3 on page 8, ante.

Bengal Act II of 1920

[The Eastern Frontier Rifles (West Bengal Battalion) Act, 1920.]¹

REPEALED IN PART
AMENDED

Ben. Act I of 1939.

{Ben. Act II of 1940.

{Ben. Act VII of 1941.

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.

ADAPTED ...

...

... (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(c) The Adaptation of Laws Order, 1950.

(31st March, 1920.)

An Act to amend the law relating to the regulation of the Eastern Frontier Rifles ²[West Bengal Battalion].

WHEREAS it is expedient to amend the law relating to the maintenance of discipline among riflemen ;

AND WHEREAS the previous sanction of the Governor-General has been obtained under section 79, sub-section (2), of the Government of India Act, 1915, to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Eastern Frontier Rifles ²[West Bengal Battalion] Act, 1920 ;

(2) It extends to the whole of ³[West Bengal] ; and

(3) It shall come into force on such day⁴ as the ⁵[State Government] may, by notification in the ⁶[Official Gazette], direct.

2. [Repeal.]—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Bengal Act I of 1939).

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1919, Pt. IV, page 185 ; and for Proceedings in Council, see *ibid.*, Pt. IVA, pages 1830-1881, and page 1414, and see the *Calcutta Gazette* of 1920, Pt. IVA, page 55, and pages 154-55.

²These words were substituted for the words "Bengal Battalion" by paragraph (1) of Article 8 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³These words were substituted for the word "Bengal" by paragraph (2) of Article 8, *ibid.*

⁴This Act came into force on the 1st May, 1920, see notification No. 1918 P. J., dated the 30th April, 1920, published in the *Calcutta Gazette* of 1920, Pt. I, page 878.

⁵The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁶These words were substituted for the words "*Calcutta Gazette*", by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

13 The Eastern Frontier Rifles (West Bengal Battalion) Act, 1920.

[Ben. Act II

(Sections 3, 4.)

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "active service" means service at outposts or against hostile tribes or other persons in the field ;

(2) "Commandant" or "Assistant Commandant" means a person appointed by the ¹[State Government] to be a Commandant or an Assistant Commandant of the Eastern Frontier Rifles ²[West Bengal Battalion], hereinafter referred to as the battalion ;

(3) "District Magistrate" includes a Deputy Commissioner

(4) "rifleman" means a police-officer ⁴[enrolled under] the Police Act, 1861, who has signed the statement in the schedule to this Act in accordance with the provisions of this Act, and includes a military police-officer appointed under the Bengal Military Police Act, 1892⁵, or the Assam Military Police Regulation, 1890⁶, or the Eastern Bengal and Assam Military Police Act, 1912⁷ ;

V of 1861.

V of 1892.
Regulation
IV of 1890.
E. B. and
A. Act II
of 1912.

(5) "superior officer" means, in relation to any rifleman,—

(a) any officer of a higher class than, or of a higher grade in the same class as himself, and

(b) any Assistant Commandant, Commandant or District Magistrate ;

(6) the expression "reasons to believe," "criminal force," "assault," "fraudulently" and "voluntarily causing hurt" have the meanings assigned to them respectively in the Indian Penal Code.

Act XLV
of 1860.

**Point-
and**

4. (1) Before a police-officer ⁸[enrolled under the Police Act, 1861, is enlisted] under this Act, the statement in the schedule shall be read and, if necessary, explained, to him, in the presence

¹ See foot-note 5 on page 17, *ante*.

² See foot-note 2 on page 17, *ante*.

³ The words "and the Superintendent of the Chittagong Hill Tracts" were omitted by paragraph (1) of Article 8 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴ These words were substituted for the words and figure "appointed under section 7 of" by sec. 2 of the Eastern Frontier Rifles (Bengal Battalion Amendment) Act, 1939 (Ben. Act II of 1940).

⁵ Repealed in Bengal by Bengal Act I of 1914, Sch. IV.

⁶ Repealed by Eastern Bengal and Assam Act III of 1912.

⁷ This Act was repealed by sec. 2 of this Act.

⁸ These words and figures were substituted for the words and figures "appointed under section 7 of the Police Act, 1861, is enrolled" by sec. 8 of the Eastern Frontier Rifles (Bengal Battalion Amendment) Act, 1939 (Ben. Act II of 1940).

*The Eastern Frontier Rifles (West Bengal Battalion) Act, 1920, 19
of 1920.]*

(Sections 5, 6.)

of a Magistrate, Commandant or Assistant Commandant, and shall be signed by him in acknowledgment of its having been so read to him :

Ben. Act
VII of
1941.

¹Provided that, in respect of a police-officer enlisted under this Act after the commencement of the Eastern Frontier Rifles (Bengal Battalion Amendment) Act, 1941, for the words "three years" in the statement in the schedule the words "seven years" shall be substituted.

V of 1861.

(2) Notwithstanding anything contained in section 9 of the Police Act, 1861, a rifleman shall not be entitled to be discharged except in accordance with the terms of the statement which he has signed under this Act.

5. There may be all or any of the following classes of rifle-men, who shall take rank in the order mentioned, namely :—

Classes and
rank of
riflemen.

- (i) *Subadars*-Major,
- (ii) *Subadars*,
- (iii) *Jumadars*,
- (iv) *Havildars*-Major,
- (v) *Havildars*,
- (vi) *Naiks*,
- (vii) *Buglers and sipahis*,

and such grades in each class as the ²[State Government] may, from time to time, direct.

6. A rifleman who—

Heinous
crimes

- (a) begins, excites, causes or joins in any mutiny or sedition, or, being present at any mutiny or sedition, does not use his utmost endeavours to suppress it, or, knowing or having reason to believe in the existence, of any mutiny or sedition, does not without delay give information thereof to his Commanding or other superior officer ; or
- (b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, knowing or having reason to believe him to be such, whether on or off duty ; or
- (c) shamefully abandons or delivers up any garrison, fortress, post or guard, which is committed to his charge or which it is his duty to defend ; or

¹This proviso was added by sec. 2 of the Eastern Frontier Rifles (Bengal Battalion Amendment) Act, 1941 (Ben. Act VII of 1941).

²See foot-note 5 on page 17, *ante*.

(Section 7.)

- (d)** in the presence of an enemy or of any person in arms against whom it is his duty to act, shamefully casts away his arms or his ammunition, or intentionally uses words or any other means to induce any other rifleman to abstain from acting against the enemy, or any such person, or to discourage such officer from acting against the enemy or such person, or who otherwise misbehaves ; or
- (e)** directly or indirectly holds correspondence with, or communicates intelligence to, or assists, or relieves, any enemy or person in arms against the State, or omits to discover immediately to his Commanding or other superior officer any such correspondence or communications coming to his knowledge ; or
- (f)** directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects any enemy or person in arms against the State ; or

who, while on active service—

- (g)** disobeys the lawful command of his superior officer ; or
- (h)** deserts or attempts to desert the service ; or
- (i)** being a sentry, sleeps at his post, or quits it without being regularly relieved or without leave ; or
- (j)** without authority leaves his Commanding Officer, or his post or party, to go in search of plunder ; or
- (k)** quits his guard, picquet, party or patrol without being regularly relieved or without leave ; or
- (l)** uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to camp or quarters, or forces a safeguard, or without authority breaks into any house or any other place for plunder, or plunders, destroys or damages any property of any kind ; or
- (m)** intentionally causes or spreads a false alarm in action, camp, garrison or quarters ;

shall be punished with transportation for life or with imprisonment which may extend to fourteen years to which a fine not exceeding five hundred rupees may be added, or with a fine not exceeding five hundred rupees.

7. A rifleman who—

- (a)** is in a state of intoxication when on or detailed for any duty, or on parade, or on the line of march ; or
- (b)** strikes, or forces or attempts to force, any sentry ; or

The Eastern Frontier Rifles (West Bengal Battalion) Act, 1920. 21
of 1920.]

(Section 7.)

- (c) being in command of a guard, picquet or patrol, refuses to receive any prisoner duly committed to his charge, or, whether in such command or not, releases any prisoner without proper authority or negligently suffers any prisoner to escape ; or**
- (d) being deputed to any guard, picquet or patrol, quits it without being regularly relieved or without leave ; or**
- (e) being in command of a guard, picquet or patrol, permits gambling or other behaviour prejudicial to good order and discipline ; or**
- (f) being under arrest or in confinement, leaves his arrest or confinement before he is set at liberty by proper authority ; or**
- (g) is grossly insubordinate or insolent to his superior officer in the execution of his office ; or**
- (h) refuses to superintend or assist in the making of any field work or other military work of any description ordered to be made either in quarters or in the field ; or**
- (i) strikes or otherwise ill-uses any rifleman subordinate to him in rank or position ; or**
- (j) being in command at any post or on the march and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has committed any riot or trespass, fails, on proof of the truth of the complaint, to have due reparation made as far as possible to the injured person and to report the case to the proper authority ; or**
- (k) designedly or through neglect injures or loses or fraudulently or without due authority disposes of his arms, clothes, tools, equipment, ammunition, accoutrements or other necessities, or any such articles entrusted to him or belonging to any other person ; or**
- (l) malingers, feigns or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity ; or**
- (m) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person ; or**
- (n) commits extortion, or without proper authority exacts from any person carriage, portorage or provisions ; or**
- (o) designedly or through neglect kills, injures, makes away with, ill-treats or loses his horse, or any animal used in the public service ; or**

(Section 8.)

who, while not on active service,—

- (p) disobeys the lawful command of his superior officer ; or
- (q) plunders, destroys, or damages any property of any kind ; or
- (r) being a sentry, sleeps at his post or quits it without being regularly relieved or without leave ; or
- (s) deserts or attempts to desert the service ; or
- (t) neglects to obey any battalion or other orders, or commits any act of omission prejudicial to good order and discipline, such act or omission not constituting an offence under the Indian Penal Code or any other Act in force in ¹[West Bengal],

Act XLV
of 1860.

shall be punished with imprisonment for a term which may extend to one year, or with a fine not exceeding two hundred rupees, or with both.

8. (1) A District Magistrate or a Commandant, or, subject to the control of the Commandant, an Assistant Commandant, and, subject to the same control, an officer not below the rank of a *Jamadar* commanding a separate detachment or an outpost or in temporary command of the battalion at the headquarters of a district during the absence of the District Magistrate, Commandant and Assistant Commandant, may, without a formal trial, award to any bugler or *sipahi* who is subject to his authority, any of the following punishments for the commission of any petty offence against discipline, which is not otherwise provided for in this Act, or which is not of a sufficiently serious nature to call for a prosecution before a Criminal Court, that is to say—

Minor
offences
and
punish-
ments.

- (a) imprisonment to the extent of seven days in the quarter-guard or such other place as may be considered suitable, with forfeiture of pay and allowances during its continuance ;
- (b) punishment drill, extra guard, fatigue or other duty, not exceeding thirty days in duration, with or without confinement to lines ;
- (c) forfeiture of pay and allowances for a period not exceeding one month.
- (d) Any of these punishments may be awarded separately or in combination with any one or more of the others.

¹See foot-note 3 on page 17, *ante*.

of 1920.]

(Sections 9—12 and the Schedule.)

9. Any rifleman sentenced under this Act to imprisonment for a period not exceeding three months shall, when he is also dismissed from the police force, be imprisoned in the nearest or such other jail as the ¹[State Government] may, by general or special order, direct, but, when he is not also dismissed from that force, he may, if the convicting court or the District Magistrate so directs, be confined in the quarter-guard or such other place as the Court or Magistrate may consider suitable.

Manner of imprisonment.

V of 1861.

10. Notwithstanding anything contained in the Police Act, 1861, or in any other enactment for the time being in force, the ¹[State Government] may invest any Commandant or Assistant Commandant with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by a rifleman and punishable under the Police Act, 1861, or this Act, and any offence committed by a rifleman against the person or property of another rifleman and punishable under any section of the Indian Penal Code or of any other Act in force in ²[West Bengal].

Powers of Commandants and Assistant Commandants for inquiring into offences under this and other Acts.

Act XLV of 1860.

11. A Commandant or Assistant Commandant shall be entitled to all the privileges which a police-officer has under sections 42 and 43 of the Police Act, 1861, section 125 of the Indian Evidence Act, 1872, and under any other enactment for the time being in force ;

Privileges of Commandants and Assistant Commandants.

I of 1872.

and shall, subject to such rules as the ¹[State Government] may from time to time make in this behalf, exercise all the powers of a District Superintendent of Police within the meaning of the Police Act, 1861.

12. The ¹[State Government] may, as regards the battalion, make such orders and rules, consistent with this Act, as ²[it thinks] expedient, relative to the several matters respecting which the Inspector-General of Police, with the approval of the ¹[State Government] may, as regards the police force, frame orders and rules under section 12 of the Police Act, 1861.

Power of State Government to make rules.

THE SCHEDULE.

STATEMENT.

(See sections 3 and 4.)

After you have served for three years in the Eastern Frontier Rifles ⁴[West Bengal Battalion], you may, at any time when not on active service, apply for your discharge, through the officer to whom you may be subordinate, to a Commandant of the Battalion, or to the Magistrate of the district in which you may be serving ;

¹ See foot-note 5 on page 17 *ante*.

² See foot-note 8 on page 17, *ante*.

³ These words were substituted for the words "they think" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1987.

⁴ See foot-note 2 on page 17, *ante*.

[Ben. Act II of 1920.]

(The Schedule.)

and you will be granted your discharge after two months from the date of your application, unless your discharge would cause the vacancies in the battalion to exceed one-tenth of the sanctioned strength ; in that case you must remain until this objection is waived by competent authority or removed. But when on active service you have no claim to a discharge and you must remain and do your duty until the necessity for retaining you in the battalion ceases, when you may make your application in the manner hereinbefore prescribed. In the event of your re-enlistment after you have been discharged, you will have no claim to reckon for pension or any other purpose your service previous to your discharge.

Signature of officer in
acknowledgment of the
above having been read
to him.

A. B.

Signed in my presence after)
I had ascertained that
A. B. understood the
purport of what he
signed.

C. D.
*Magistrate, Commandant or
Assistant Commandant.*

Bengal Act V of 1920

[The Bengal Alluvial Lands Act, 1920].¹

AMENDED

...

... Ben. Act V of 1935.

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.

ADAPTED

(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(c)* The Adaptation of Laws Order, 1950.*

(13th October, 1920.)

An Act to prevent disputes concerning the possession of certain lands in Bengal gained by alluvion, or by dereliction of a river or the sea.

WHEREAS it is expedient to make provision for the prevention of disputes concerning the possession of certain lands in Bengal gained by alluvion, or by dereliction of a river or the sea ;

5 and 6
Geo. V,
c. 61.

AND WHEREAS the previous sanction of the Governor General has been obtained, under section 79, sub-section (2), of the Government of India Act, 1915, to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Alluvial Lands Act, 1920.

Short title
and
extent.

(2) It extends to the whole of ^a[West Bengal].

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions,

(a) “alluvial land” means land which is gained from a river or the sea in any of the ways referred to in the Bengal Alluvion and Diluvion Regulation, 1825, the Bengal Alluvion and Diluvion Act, 1847, or the Bengal Alluvion (Amendment) Act, 1868, and includes reformations *in situ* ; and

Ben. Reg.
XI of
1825.
IX of 1847.
Ben. Act
IV of 1868.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1920, Pt. IV, page 15 ; and for Proceedings in Council, see *ibid*, Pt. IVA, pages 155—157, and page 196 and pages 798—800 and pages 915—942.

*These words were substituted for the word “Bengal” by paragraph (2) of Article 8 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

[Ben. Act V

(Section 3.)

- (b) "Collector" means the Collector of a district or a sub-divisional officer or any other officer not below the rank of a Deputy Collector exercising the powers of a Magistrate of the first class appointed by the ¹[State Government], to discharge any of the functions of a Collector under this Act.

Power of
Collector
to attach
alluvial
land.

3. (1) Notwithstanding anything contained in the Bengal Alluvion and Diluvion Regulation, 1825, the Bengal Alluvion and Diluvion Act, 1847, or the Bengal Alluvion (Amendment) Act, 1868, the Collector, if he is credibly informed that a dispute likely to cause a breach of the peace exists or is likely to arise, in regard to any alluvial land which in his opinion has recently formed, may, after making an order in writing, stating the grounds therefor, in the interest of public order, attach such land, and may demarcate it with boundary pillars.

Ben. Reg. XI
of 1825.
IX of 1847.
Ben. Act
IV of 1868.

²(1a) Where such land is situated within the limits of more than one district, or it is doubtful within the limits of which district or districts such land is situated any Collector who considers that any portion of such land is situated within the limits of his district may, after recording his reasons therefor, attach the whole of such land. If, after attachment, such land or any portion thereof is found to be situated within any other district or is transferred to another district, the attachment shall continue to be valid but the Collector who attached the land may either transfer the case, in respect of the whole or any portion of the attached land, for disposal to the Collector of any such other district or may himself continue the proceedings under the provisions of this Act. The Collector to whom a case is transferred for disposal under this sub-section shall be deemed, for the purposes of this Act, to have attached the land under this section.

(2) When the Collector attaches any alluvial land under sub-section (1) ³[or sub-section (1a)], he may himself manage such land during the period of attachment, or may, if he thinks fit, appoint a receiver thereof, who, subject to the control of the Collector, shall have all such powers conferrable on a receiver appointed under the Code of Civil Procedure, 1908, as may be given to him by the Collector :

Act V of
1908.

Provided that neither the Collector nor the receiver shall make a settlement or resettlement of any land ⁴[for a period exceeding one year nor shall he charge any *salami* for such settlement or re-settlement].

¹The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²Sub-section (1a) was inserted by sec. 2(1) of the Bengal Alluvial Lands (Amendment) Act, 1934 (Ben. Act V of 1935).

³These words, brackets, figure and letter were inserted by sec. 2(3)(i), *ibid.*

⁴These words were substituted for the words "for a period exceeding three years" by sec. 2(3)(ii), *ibid.*

of 1920.]

(Section 4.)

(3) Nothing in this section shall preclude any party interested from showing, before the Collector makes an order of reference under section 5, sub-section (1), that no such dispute as aforesaid exists or is likely to arise; and the Collector, if satisfied that no such dispute as aforesaid exists or is likely to arise, shall cancel his order of attachment under sub-section (1),¹[or sub-section (1a)], and all further proceedings thereon shall be stayed, but, subject to such cancellation, the said order shall be final. ²[The Collector may, if he thinks fit, cancel his order of attachment under sub-section (1) or sub-section (1a) in respect of a portion of the attached land and continue proceedings in respect of the remainder of such land.]

³(4) When an order of attachment of any alluvial land is cancelled under sub-section (3), the Collector shall issue a notice in the prescribed manner inviting claims to the net receipts from the land during attachment, and shall order the payment of such receipts to the persons who, in his opinion, are entitled to the same. The net receipts shall be calculated by deducting from the gross receipts the costs incurred under this section, and under section 4, sub-section (1), and section 4A, sub-section (1), and the cost of preparation of the reference to be made under section 5, sub-section (1), if any.

³(5) In estimating for the purposes of sub-section (4), section 5, and section 7 the costs incurred under this section, the following costs shall be included in the cost of management, namely :—

X of 1892.

- (a) the rate leviable under the Government Management of Private Estates Act, 1892,
- (b) the cost of special staff, if any, and
- (c) where no special staff is employed for collection, a sum not exceeding five *per centum per annum* on the actual collections.

4. (1) When the Collector has attached any alluvial land under section 3, he shall as soon as possible cause a survey to be made and a map to be prepared of the land, including the revenue, diara and other relevant survey lines.

Collector to cause survey to be made.

(2) The survey made under sub-section (1) shall be deemed to be survey under the Bengal Survey Act, 1875, and the Collector shall exercise in respect of such survey all powers which he is empowered to exercise for the purposes of inquiries and surveys under that Act.

Ben. Act
V of 1875.

(3) Notwithstanding anything contained in section 83 of the Indian Evidence Act, 1872, a map prepared under sub-section (1) shall be presumed by the Court to be accurate until the contrary is shown.

I of 1872.

¹These words were inserted by sec. 2(3)(i) of the Bengal Alluvial Lands (Amendment) Act, 1934 (Ben. Act V of 1935).

²These words, brackets, figures and letter were added by sec. 2(3)(ii), *ibid.*

³Sub-sections (4) and (5) were inserted by sec. 2(4), *ibid.*

(Sections 4A, 5.)

List of
claimants.

¹4A. (1) When the Collector has attached any alluvial land under section 3, he shall as soon as possible issue a notice in the prescribed manner calling upon all persons claiming title to any part of such land to file statements specifying their claims and the grounds thereof, and the name and jurisdiction number of the village and *tauzi* number of the estate to which they allege that the land appertains.

If any of the aforesaid claimants is not a proprietor of such estate, he shall also mention in the statement the name of the landlord, under whom he holds the land, the area and the rent of his tenancy and such other particulars as may be necessary to elucidate his claim.

If the land is included in a map as prepared or a record-of-rights as finally published under Chapter X of the Bengal Tenancy Act, 1885, the claimant shall also mention the particulars of the *khatians* and plot numbers necessary to identify the land in the map or record-of-rights.

VIII of
1885.

(2) On receipt of a statement of claim referred to in subsection (1) the Collector shall examine the claim and call for such further particulars, if any, as he considers necessary, and shall, if he is satisfied that the claim is *bona fide*, enter the name of the claimant in the list of claimants. The Collector may exclude from the said list the name of any claimant who fails to supply any of the required particulars. If any part of the attached land is claimed ²[by any Government], the Collector shall ³[include that Government] in the said list of claimants.

(3) An application for inclusion in the list of claimants by a person with whom any of the land has been settled or resettled during the period of attachment shall not be considered unless it alleges a title independent of such settlement or resettlement.

Reference
to Civil
Court.

5. (1) When the survey and map referred to in section 4, subsection (1), have been completed the Collector shall as soon as possible pass an order making a reference to the principal Civil Court of original jurisdiction in the district for a decision as to what person has a title to the land, ⁴[and shall include in the order the list of claimants referred to in section 4A and shall state—

(a) whether any land claimed by any such claimant has been identified as being included in the land which is the subject of the reference,

¹Section 4A was inserted by sec. 8 of the Bengal Alluvial Lands (Amendment) Act, 1984 (Ben. Act V of 1985).

²These words were substituted for the words "by Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "include Government", *ibid.*

⁴These words, brackets, letters and figures within square brackets were substituted for the original words by sec. 4(1) of the Bengal Alluvial Lands (Amendment) Act, 1984 (Ben. Act V of 1985).

of 1920.]

(Section 5.)

- (b) the costs incurred under section 3, section 4, sub-section (1), section 4A, sub-section (1), and the cost of preparation of the reference made under this sub-section,
- (c) the value of the land, and
- (d) the names of any persons who have filed statements of claim under section 4A and whose names are not included in the list of claimants.]

¹In the case of any land referred to in section 3, sub-section (1a), the reference shall be made to the principal Civil Court of original jurisdiction in the district in which, in the opinion of the Collector, the major portion of the attached land is situated.

VII of
1870.

²(1a) In making such reference the Collector shall advance the court-fees payable under the Court-fees Act, 1870, on a plaint in a suit for determination of title to land and such process-fees as may be required for service of notices on the parties to the reference. The Collector may make such advance from the balance of the receipts at credit in his accounts of the attached land, or, if this is not practicable, may at any time recover such advance or any part thereof from such balance.

(2) On receipt of a reference made under sub-section (1), the principal Civil Court of the district may either proceed to determine the matter or may transfer the matter for determination to any other Civil Court subordinate to such Court competent to try or dispose of a suit for the determination of title to the land.

The said Court shall issue notices ³[to all the persons mentioned in the list of claimants referred to in section 4A] to appear and file statements of their respective claims. ⁴[No other person shall be made a party to the reference unless the said Court is satisfied that for some reason not due to wilful default or negligence on the part of such person he was unable to file a statement of claim referred to in section 4A, sub-section (1), in due time or that the Collector has without sufficient reason held that such person's claim was not *bona fide*. A person pleading ignorance of the issue of the notice under that sub-section shall not be made a party to the reference unless he proves to the satisfaction of the said Court that he had no knowledge that the land had been attached.] The said Court shall also determine which of the claimants has the right to begin at the hearing of the reference.

Act V of
1908.

(3) Save as otherwise provided in this Act, a reference made under sub-section (1), shall be deemed to be a suit for all the purposes of the Code of Civil Procedure, 1908, and every decision by a Civil Court under sub-section (2), shall be deemed to be a decree within the meaning of that Code and appealable as such.

¹This paragraph was added by sec. 4(2) of the Bengal Alluvial Lands (Amendment) Act, 1934 (Ben. Act V of 1935).

²Sub-section (1a) was inserted by sec. 4(3), *ibid*.

³These words, figure and letter were substituted for the original words by sec. 4(4), (i), *ibid*.

⁴These words, figures, letter and brackets were inserted by sec. 4(4)(ii), *ibid*.

(Sections 6, 7.)

¹(4) The said Court shall decide to whom and in what proportions the net receipts, if any, from the land during attachment shall be paid. The net receipts shall be calculated by deducting from the gross receipts the costs incurred under section 3, section 4, sub-section (1), section 4A, sub-section (1), and the costs incurred by the Collector in the proceedings under this section including the cost of preparation of the reference made under sub-section (1).

¹(5) The said Court shall also decide by whom and in what proportions the costs incurred under section 3, section 4, sub-section (1), section 4A, sub-section (1), and the costs incurred by the Collector and by the other parties in the proceedings under this section including the cost of preparation of the reference made under sub-section (1), are payable.

¹(6) If the costs referred to in sub-section (4) exceed the gross receipts the Court shall decide by whom and in what proportions the amount of such excess shall be payable, and such amount shall be recoverable by the Collector, in accordance with the decision of the Court, from the persons liable, as arrears of a public demand.

¹(7) The person entitled to the net receipts may apply to the Court for the recovery from the persons liable of any amount deducted from the gross receipts in excess of the amount, so deducted, for which he is himself liable. If ²[the Government] are entitled to the net receipts or to any part thereof the Collector may recover as arrears of a public demand any amount due to ²[the Government] or may apply to the Court for the recovery of the same.

¹(8) A reference made under sub-section (1) shall not be dismissed for default but the said Court shall decide the same after taking the evidence of such of the claimants mentioned by the Collector in the order of reference or added by the Court under section 5, sub-section (2), as it may think necessary.

6. Whenever the Court makes an order under section 5, sub-section (2), it shall certify to the Collector its decision, and the Collector shall thereupon put the person stated in such order to be entitled to the land in possession thereof.

7. (1) Every order under section 3, sub-section (3), shall state the amount of ³[costs incurred under section 3, section 4, sub-section (1), section 4A, sub-section (1), and the cost of

¹Sub-sections (4) to (8) were substituted for the original sub-section (4) by sec 4(5) of the Bengal Alluvial Lands (Amendment) Act, 1934 (Ben. Act V of 1935).

²The words "the Crown" were originally substituted for the word "Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words, figures, letter and brackets were substituted for the words, figures and brackets "costs incurred under section 3 and section 4, sub-section (1), if any," by sec. 5 of the Bengal Alluvial Lands (Amendment) Act, 1934 (Ben. Act V of 1935).

Taking
possession
of land by
person
entitled
to it.
Costs.

of 1920.]

(Sections 8—10.)

preparation of the reference to be made under section 5, sub-section (1), if any,] and by what persons and in what proportions they are to be paid, and such costs shall be recoverable as arrears of a public demand.

(2) Any person against whom an order has been made with regard to such costs, may, within one month of the date of such order, prefer an appeal to the Commissioner in respect of such costs.

8. The ¹[State Government] may, subject to the condition of previous publication by notification in the ²[Official Gazette], make rules—

Rules.

(1) to regulate the procedure to be followed by the Collector in attaching any alluvial land under section 3 ;

(2) to regulate the procedure to be followed by the Collector or receiver in the management of such land during the period of attachment ;

(3) to regulate the procedure to be followed by the Collector in demarcating, surveying and preparing a map of, any alluvial land ;

³(3a) to regulate the procedure to be followed by the Collector in distributing the net receipts from attached land, when the attachment is cancelled under section 3, sub-section (3), and when the Civil Court passes a decree under section 5 ;

³(3b) to regulate the issue of notices prescribed under section 3, sub-section (4), or under section 4A, sub-section (1) ;

(4) to regulate the procedure to be followed in making a reference to the Court under section 5, sub-section (1);

(6) to regulate the manner of making over possession of alluvial land under section 6 ; ⁵*

⁴(6a) to provide for the creation of an Alluvial Lands Dispute Fund in any district and the administration of the same ; and

(7) generally to carry out the purposes of this Act.

9. No suit or other legal proceedings shall lie against the Collector, or any person acting under his direction, for any act done or ordered to be done in good faith under this Act.

Indemnity.

10. When the Collector has attached any alluvial land under section 3, no proceedings under section 145 of the Code of Criminal Procedure, 1898, shall be instituted in any Court in respect of the same land, or of any part thereof ; and any such proceedings already commenced and pending in any such Court shall be stayed.

Bar to institution of proceedings under section 145 of the Code of Criminal Procedure, 1898.

Act V of 1898.

¹See foot-note 1 on page 26, ante.

²These words were substituted for the words "Calcutta Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Clauses (3a) and (3b) were inserted by sec. 6(1) of the Bengal Alluvial Lands (Amendment) Act, 1934 (Ben. Act V of 1935).

⁴The Original clause (5) was omitted by sec 6(2), *ibid*.

⁵The word "and" was omitted by sec. 6(3), and clause (6a) was inserted by sec. 6(4), *ibid*.

Bengal Act VI of 1920

THE BENGAL AGRICULTURAL AND SANITARY IMPROVEMENT ACT, 1920.

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3. Procedure by the Collector on receipt of application for the undertaking of a work.
4. Order after inquiry.
5. Engineer to prepare scheme.
6. Publication of scheme.
7. Procedure in the case of minor schemes.
8. Power of Collector to reject, or accept, scheme.
9. Procedure in the case of major schemes. Appointment of committee.
10. Committee to consider major schemes.
11. Committee to forward scheme to State Government for consideration.
12. Order by the State Government on the scheme.
13. Engineer to execute scheme.
14. Compulsory acquisition of land needed for the purposes of this Act.
15. Advance of, or security for, cost of work.
16. Power to enter into, or upon, land forming part of a local area.

Apportionment and recovery of costs.

17. Report by Engineer on completion of work.
18. Procedure on receipt of report.
19. Collector to determine amount recoverable and prepare detailed statement.
20. Procedure on completion of detailed statement.
21. Realization of costs due.
22. Recovery of arrears as arrears of land-revenue.

Miscellaneous.

23. Compensation for consequential damage.
24. Limitation to claim for compensation.
25. Procedure for determining compensation.
26. Matters to be considered in determining compensation.
27. Additional costs.
28. Drainage works subject to laws relating to public embankments.
29. Lands and works how to be vested.
30. Maintenance of works.
31. Administration of capitalized cost of maintenance.
32. Penalty for constructing weirs, etc., obstructing public drainage.
33. Powers of the Commissioner, etc., in taking evidence.
34. Proceedings not to be invalidated by irregularities.
35. Power of State Government to make rules.
36. Repeal.

Bengal Act VI of 1920

(The Bengal Agricultural and Sanitary Improvement Act, 1920.)¹

AMENDED

{Ben. Act II of 1932.
{Ben. Act I of 1939.

(a) The Government of India
(Adaptation of Indian Laws)
Order, 1937.

ADAPTED

(b) The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.

(c) The Adaptation of Laws
Order, 1950.

(13th October, 1920.)

An Act to consolidate and amend the law relating to the construction of drainage and other works for the improvement of the agricultural and sanitary conditions of certain areas in Bengal.

WHEREAS it is expedient to consolidate and amend the law relating to the construction of drainage and other works for the improvement of the agricultural and sanitary conditions of certain areas in Bengal ;

It is hereby enacted as follows :—

Preliminary.

1. (1) This Act may be called the Bengal Agricultural and Sanitary Improvement Act, 1920.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of ³[West Bengal] ³[except Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal Act, 1923], and any area which has been or may hereafter be constituted a municipality under the provisions of the Bengal Municipal Act, ⁴[1932] :

Ben. Act
III of 1923.

Ben. Act
XV of
1932.

Provided that if any scheme under this Act jointly affects any area to which this Act extends and any municipal area, this Act shall be deemed to apply to such municipal area for the purposes of such scheme.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1920, Pt. IV, page 36 ; and for Proceedings in Council, see *ibid*, Pt. IVA, pages 267-268 and 293-294 and 676-678 and 901-915.

²These words were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³These words, brackets and figures were substituted for the words, brackets and figures "except the town of Calcutta as defined in clause (7) of section 3 of the Calcutta Municipal Act, 1899" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939). The Calcutta Municipal Act, 1923 (Ben. Act III of 1923) has been repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951) and this reference should now be construed as a reference to cl. (11) of sec. 5 of the latter Act.

⁴These figures were substituted for the figures "1884", by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

(Preliminary.—Section 2.)

(3) It shall come into force on such date¹ as the ²[State Government] may, by notification in the ³[Official Gazette], direct.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “Collector”—

- (a) means the officer in charge of the revenue jurisdiction of the district within which the lands which form the subject of a scheme under this Act are situated, or, in the case of a scheme relating to lands lying in more than one district, any such officer or officers as may be selected by the Commissioner ; and
- (b) includes any officer appointed by the ²[State Government] by general or special order to discharge all or any of the functions of the Collector under this Act ;

(2) the “cost” of a work includes—

- (a) the total expenditure incurred by the Engineer for surveys, plans, estimates, valuations of a work, and incidental expenses connected therewith whether antecedent or subsequent to the adoption of a scheme, and all expenses incurred in its execution ;
- (b) the estimated capitalized cost of the maintenance of the work ;
- (c) the total expenditure incurred by the Collector in connection with the scheme and work inclusive of any preliminary inquiry, compensation for the cost of any land taken or acquired for the purposes of this Act, the preparation or revision of any record-of-rights and the cost of apportionment and recovery ;
- (d) all amounts paid, or estimated as payable, as compensation for damage inflicted in carrying out any scheme or work under this Act ; and
- (e) interest on all recoverable deposits or advances made by the ²[State Government], or by a local authority or any person, at such rates and from and to such dates as may be prescribed ;

¹This Act came into force on the 1st December, 1920, see Notification No. 19887L.R., dated the 30th November, 1920, published in the *Calcutta Gazette* of 1920, Pt. I., page 2230.

²The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words were substituted for the words “Calcutta Gazette” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

The Bengal Agricultural and Sanitary Improvement Act, 1920. 37
of 1920.]

(Preliminary.—Section 2.)

(3) "Engineer" means the District Engineer, or any Engineer, or other person specially appointed by the ¹[State Government] in the case of major schemes, or by the Collector in the case of minor schemes, to discharge all or any of the functions of an Engineer under this Act ;

(4) "landlord" means a person immediately under whom a tenant holds and includes a landlord in *khas* possession and also the ²[Government] :

(5) "local area" means the portion of a district or districts to which a scheme under this Act relates, and any municipal area included within such scheme ;

(6) "local authority" means any authority legally entitled to, entrusted by ³[any Government] with, the control or management of a municipal, or local fund, and includes a Local Board constituted under the Bengal Local Self-Government Act of 1885 ;

(7) "major scheme" means a scheme—

(i) in which the estimated cost of the work involved exceeds the prescribed amount, or

(ii) in which more than one independent local authority is concerned, or

(iii) which the Collector has certified should be treated, in such circumstances as may be prescribed, as a major scheme ;

(8) "minor scheme" means any scheme other than a major scheme ;

(9) "prescribed" means prescribed by rules under this Act ;

(10) a "scheme" includes—

(a) a survey and plans,

(b) estimates of the cost of the work involved in such scheme,

(c) a description or map of the local area, and

(d) a report on the scheme ;

(11) "tenant" means a person, whether resident or non-resident in the local area, who holds land or premises for any purposes whatsoever under another person, and is, or but for a special contract would be, liable to pay rent for that land or premises to that person, and includes any rent-free holder or temporary occupant of land or premises.

¹See foot-note 2 on page 36, *ante*.

²The word "Crown" was originally substituted for the word "Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words were substituted for the word "Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

38 The Bengal Agricultural and Sanitary Improvement Act, 1920.

[Ben. Act VI

(Preliminary.—Application for construction of works and procedure thereon.—Sections 3—7.)

Application for construction of works and procedure thereon.

Procedure
by the
Collector
on receipt
of
application
for the
der-
ring of
work.

3. Whenever an application is received by the Collector from a local authority, or local authorities, or any person, or persons, recommending the undertaking of any work for the improvement, or for the prevention of the deterioration, of the agricultural or sanitary condition of any area, or if the Collector is himself of opinion that the undertaking of any such work is necessary, he shall cause such inquiries as he may deem necessary to be made and shall thereafter consult the local authority or local authorities concerned :

Provided that if after such inquiries, the Collector is satisfied that the proposed work will constitute a minor scheme which is mainly agricultural in character, reference to any local authority shall not be necessary but may be made if the Collector deems it desirable.

Order
after
inquiry.

4. (1) On completion of the necessary inquiries and after consultation, when necessary, with the local authority or local authorities, the Collector shall—

(a) if he considers that the proposed work should not be done, pass an order to that effect ; or

(b) if he considers that the work proposed or modified should be done, take action as hereinafter provided.

(2) An appeal shall lie to the Commissioner against every order by the Collector under clause (a) of sub-section (1) within thirty days of such order ; and the decision of the Commissioner thereon shall be final.

Engineer
to pre-
pare
scheme.

5. (1) Whenever it has been decided under section 4 to proceed with any work, the Collector shall direct the Engineer to prepare a scheme.

(2) When the Engineer has prepared any such scheme, he shall forward it to the Collector, who may, subject to such rules as may be prescribed in this behalf, make such modifications therein as he may deem necessary.

Publication
of scheme.

6. As soon as possible after the receipt of the scheme, the Collector shall publish a notice in the prescribed manner calling for objections or suggestions thereon by any local authorities, or person interested, within such time as may be prescribed.

Procedure
in the case
of minor
schemes.

7. In the case of minor schemes, the Collector shall, as soon as possible after the expiry of the period fixed by the notice published under section 6, proceed in the prescribed manner to consider any objections or suggestions received in regard to the scheme.

The Bengal Agricultural and Sanitary Improvement Act, 1920. 39
of 1920.]

(Application for construction of works and procedure thereon.—
Sections 8—11.)

8. (1) The Collector may—

(a) reject the scheme referred to in section 7, or

(b) subject to such rules as may be prescribed in this behalf, accept it with such modifications as he may deem necessary, and shall determine, in the prescribed manner, the method in which, and the conditions subject to which, the cost of the work shall be financed and distributed.

Power of
Collector
to reject,
or accept,
scheme.

(2) An appeal shall lie to the Commissioner against every order by the Collector under sub-section (1) within thirty days of such order; and the decision of the Commissioner thereon shall be final.

9. In the case of major schemes, the Collector shall, as soon as possible after the receipt of the scheme, in addition to the publication required by section 6, refer it to the Commissioner, and the Commissioner shall forthwith appoint a committee, to be constituted in the prescribed manner, with the Collector as Chairman, representing the local authorities and the land-owning, cultivating and other interests of the area to which the scheme relates.

Procedure
in the
case of
major
schemes.
Appoint-
ment of
committee.

10. (1) On the expiry of the period fixed by the notice published under section 6, the committee shall proceed in the prescribed manner to consider any objections or suggestions in regard to the scheme received by the Collector, and may either accept the scheme with such modifications as it may deem necessary, or reject it.

Committee
to consider
major
schemes.

(2) Whenever a scheme has been accepted by the committee, it shall frame proposals, in the prescribed manner, regarding the method in which, and the conditions subject to which, the cost of the work shall be financed and distributed.

(3) An appeal shall lie to the ¹[State Government] against every order by the committee under sub-section (1) or (2), within sixty days of such order.

(4) It shall be in the discretion of the ¹[State Government], in the case of any scheme rejected by the committee under sub-section (1), of ²[its] own motion, to cancel or modify such order, and in such case the committee shall be required to frame proposals for financing and distributing the cost of the work as sanctioned by the ¹[State Government], in the manner set out in sub-section (2).

11. When proceedings under section 10 have been completed, the committee shall forward the scheme through the Commissioner to the ¹[State Government], together with its proposals for financing and distributing the cost thereof.

Committee
to forward
scheme to
State
Govern-
ment for
considera-
tion.

¹ See foot-note 2 on page 86, ante.

² This word was substituted for the word "their" by paragraph 5 (u) of the Government of India (Adaptation of Indian Laws) Order, 1937.

40 *The Bengal Agricultural and Sanitary Improvement Act, 1920.*

[Ben. Act VI

(Application for construction of works and procedure thereon.—
Sections 12—16.)

Order by
the State
Govern-
ment on
the scheme.

12. The ¹[State Government] shall consider the scheme and proposals of the committee, together with any appeals which may have been received under section 10, sub-section (3), and may reject them, or accept them, with such modifications as ²[it] may consider necessary, and the order of the ¹[State Government] thereon shall be final.

Engineer
to execute
scheme.

13. (1) As soon as possible after a scheme has been accepted under section 8, or section 12, the Collector shall direct the Engineer to execute the work.

(2) When the cost or part thereof is to be recovered from the landlords and tenants of the local area, the Collector may direct the preparation, or revision, as the case may be, of a record-of-rights of the local area in accordance with the provisions of Chapter X of the Bengal Tenancy Act, 1885, in so far as the same may be applicable.

VIII of
1885,

Compul-
sory
acquisition
of land
needed for
the pur-
poses of
this Act.

14. The ²[State Government] may, at the request of the Collector, acquire, under the provisions of the Land Acquisition Act, 1894, any land required for the purpose of this Act.

I of 1894.

"Land" in this section has the same meaning as in clause (a) of section 3 of the Land Acquisition Act, 1894.

15. **

Advance
of, or
security
for, cost of
work.

(2) The cost of the work, or any portion thereof may ⁴* be advanced by the ¹[State Government], or by any local authority, or any person, ⁵[or security for such cost to the satisfaction of the Collector may be given by the local authority or person concerned.]

⁶(3) Notwithstanding anything contained in the Bengal Local Self-Government Act of 1885, it shall be lawful for a District Board to make any payment referred to in sub-section (2) from the district fund.

Ben. Act
III of 1885.

Power to
enter into,
or upon,
land
forming
part of a
local area.

16. The Engineer, or any other person duly authorized to prepare a scheme, or to execute any work under this Act may himself, or by his agents and workmen, enter into or upon any land forming part of the local area, and carry out such work thereon as may be required.

¹ See foot-note 2 on page 86, *ante*.

² This word was substituted for the word "they" by paragraph 5(8) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³ Sub-section (1) was omitted by sec 2(i) of the Bengal Agricultural and Sanitary Improvement (Amendment) Act, 1932 (Ben. Act II of 1932).

⁴ The words "in any case" were omitted by sec. 2 (ii) (a), *ibid*.

⁵ These words were added by sec. 2(ii) (a), *ibid*.

⁶ Sub-section (3) was added by sec. 2 (iii), *ibid*.

**The Bengal Agricultural and Sanitary Improvement Act, 1920. 41
of 1920.]**

(Apportionment and recovery of costs.—Sections 17—19.)

Apportionment and recovery of costs.

17. On the completion of any work executed under this Act, the Engineer shall forthwith submit to the Collector a report accompanied by—

Report by
Engineer
on com-
pletion of
work.

- (a) a statement of the items of the cost of the work referred to in sub-clauses (a), (b) and (d) of clause (2) of section 2; and
- (b) a copy of the map prepared in the prescribed manner of the local area benefited by the improvement.

18 (1) On receipt of the report and other documents required by section 17, the Collector shall—

Procedure
on receipt
of report.

- (i) prepare a statement showing the total cost of the work;
- (ii) distribute the said cost between—
 - (a) the applicant,
 - (b) the ¹[State Government],
 - (c) the local authorities concerned, and
 - (d) the landlords and tenants collectively of the local area, in the manner determined under section 8 or 10; and
- (iii) apportion the share of such cost recoverable from the landlords or tenants, or both, or different classes thereof, according to such rates as may be determined in the prescribed manner, having regard, so far as practicable, to the degree of benefit derived, or estimated to be derived by the different areas and classes affected by the scheme.

(2) The Collector shall publish in the prescribed manner the statement and the particulars referred to in sub-section (1), and a copy of the map submitted under clause (b) of section 17, after such revision as he may deem necessary, and shall send an abstract of the statement and particulars to each local authority concerned.

(3) Any person interested may appeal to the Commissioner within thirty days of such publication against the order of apportionment under clause (iii) of sub-section (1), and the decision of the Commissioner thereon shall be final.

19. The Collector shall then determine the amount recoverable from each landlord or tenant and enter such amount in a detailed statement.

Collector
to deter-
mine
amount
recoverable
and

statement.

¹ See foot-note 2 on page 36, ante.

42 *The Bengal Agricultural and Sanitary Improvement Act, 1920.*

[Ben. Act VI

(Apportionment and recovery of costs.—Miscellaneous.—Sections 20—24.)

Procedure
on com-
pletion of
detailed
statement.

20. (1) On completion of the detailed statement referred to in section 19, the Collector shall publish a copy of the same in the prescribed manner.

(2) Any landlord, or tenant within the local area may, if he objects to the amount apportioned against him, appeal to the Commissioner within sixty days of the publication of the said statement on one or more of the following grounds, namely :—

- (a) that he will not be benefited by the improvement, or
- (b) that there has been material error in regard to the degree of benefit derived, or estimated to be derived, from the improvement, or
- (c) that he holds no land or premises, or has no interest in the land or premises in the local area.

(3) The order of the Commissioner on any appeal under sub-section (2) shall be final.

(4) The Collector may, on application or on his own motion, at any time, correct any mistakes in the calculation of the amount apportioned against any landlord or tenant.

Realization
of costs
due.

21. After the disposal of appeals, if any, under section 20, sub-section (2), the Collector shall confirm the statement, with modifications, if any, and shall proceed in the prescribed manner to recover from the local authority, person, landlord or tenant concerned, the amount of the cost due from them.

Recovery
of arrears
as arrears
of land-
revenue.

22. All arrears shall be recoverable in the prescribed manner as if they were arrears of land-revenue.

Miscellaneous.

Compensa-
tion for
conse-
quential
damage.

23. Whenever any land, other than land taken or acquired for the purpose of this Act, or any right of fishery, right or drainage, right of the use of water, or other right of property, is injuriously affected by any act done, or any work executed under this Act, the person in whom such property, or right is vested may prefer a claim by petition to the Collector, for compensation :

Provided that the refusal to execute any work for which application is made, and the refusal of permission to execute any work for the execution of which the permission of the Collector or any other authority is required under this Act, shall not be deemed acts on account of which a claim for compensation can be preferred under this section.

Entertainment
of claim
for com-
pensation.

24. (1) No claim under section 23 shall be entertained which is made later than three years after the completion of the work by which such right is injuriously affected.

(2) For the purposes of this section, the date of the completion of the work shall be the date of the publication of the statement and particulars referred to in section 18, sub-section (2).

The Bengal Agricultural and Sanitary Improvement Act, 1920. 43
of 1920.]

(Miscellaneous.—Sections 25—28.)

I of 1894.

25. When any such claim is made, proceedings shall be taken with a view to determine the amount of compensation, if any, which should be made and the person to whom the same should be payable, so far as possible in accordance with the provisions of the Land Acquisition Act, 1894.

Procedure for determining compensation.

26. In any such case which is referred by the Collector to the Court for the purpose of determining whether any, and, if so, what amount of compensation should be awarded, the Court shall take into consideration—

Matters to be considered in determining compensation.

First, the market value of the property or right injuriously affected at the time when the act was done or the work executed ;

Secondly, the damage sustained by the claimant by reason of such act or work injuriously affecting the property or right ;

Thirdly, the consequent diminution of the market value of the property or right injuriously affected when the act was done or the work executed ;

Fourthly, whether any person has derived, or will derive, benefit from the act or work in respect of which the compensation is claimed or from any work connected therewith, in which case they shall set off the estimated value of such benefit, if any, against the compensation which would otherwise be decreed to such person :

Provided that the Court shall not take into consideration—

First, the degree of urgency which has led to the act or work being done or executed ;

Secondly, any damage sustained by the claimant, which, if caused by a private person, would not in any suit instituted against such person justify a decree for damages.

27. If, after the apportionment of the cost of the work as above provided, any expenses not included in such apportionment shall be found to have been paid, or to have become payable, on account of the said work, whether as compensation, or otherwise, or if the amount recovered is insufficient to cover the cost of the scheme, the Collector may proceed to distribute, apportion and recover such additional cost, or deficiency ; and the procedure set out in section 18 and the following section shall then apply.

Additional costs.

28. All outlets and water-channels, natural or artificial, included in a scheme under this Act, whether reconstructed, cleared, altered, enlarged, excavated or cut under this Act or not, and the construction and maintenance of embankments and dams and works therein, or connected therewith, shall be subject to the law for the time being in force regulating the construction and maintenance of public embankments, rivers, channels and outlets.

Drainage works subject to laws relating to public embankments.

(Miscellaneous.—Sections 29—33.)

Lands and
works how
to be
vested.

29. All lands which are taken, or acquired permanently under this Act for the purpose of a scheme, and any work constructed under this Act, and all water-channels, embankments and dams included within the scheme, whether reconstructed, cleared, altered, enlarged, excavated, or cut under this Act, or not, shall be vested in the Collector on behalf of ¹[Government], or subject to such conditions as may be prescribed, in such local authority, or person as the ²[State Government], may, by general or special order, direct :

Provided that when the total cost of any work has been paid by any local authority, or person, the said lands and works, including any water-channels, embankments and dams, shall, subject to such conditions as may be prescribed, vest in such local authority, or person.

Main-
tenance of
works.

30. The local authority, or person in whom the lands, or works, water-channels, embankments, and dams, are vested shall be responsible for their maintenance, subject to such rules as may be prescribed :

Provided that if the Collector is satisfied that such maintenance is being neglected, or that it is desirable, in the public interests, that such maintenance should be undertaken by the Government, he shall report, through the Commissioner, to the ²[State Government], who may direct that the duty of maintenance be undertaken by the ²[State Government].

Adminis-
tration of
capitalized
cost of
main-
tenance.

31. All sums recovered as the estimated capital cost of the maintenance of works constructed under this Act shall be administered in the prescribed manner.

Penalty
for
construct-
ing weirs,
etc.,
obstructing
drainage

32. (1) Any person who, without lawful authority, erects, or causes to be erected, any weir or other obstruction in any outlet or water-channel, or cultivates the bed of a water-channel, so as to obstruct natural drainage, shall, upon conviction before a Magistrate, be liable to a penalty not exceeding two hundred rupees for every such offence.

(2) It shall be in the discretion of such Magistrate to direct any such offender to remove or pay for the entire cost of the removal of any such obstruction.

Powers of
the
Commis-
sioner, etc.,
in taking
evidence.

33. The Commissioner, the Collector, and a committee appointed under section 9 shall have all such powers as are conferred on a Civil Court by the Code of Civil Procedure, 1908, for the purpose of compelling the attendance of witnesses and the production of evidence, and for the purpose of examining witnesses in any inquiry, or appeal, as the case may be, which they may be empowered to make or entertain under this Act.

Act V of
1908.

¹These words within square brackets were substituted for the words "His Majesty" by paragraph 4(2) of the Adaptation of Laws Order, 1950.

²See foot-note 2 on page 36, ante.

The Bengal Agricultural and Sanitary Improvement Act, 1920. 45
of 1920.]

(Miscellaneous.—Sections 34, 35.)

34. No proceeding under this Act shall be defeated or invalidated by reason of any defect or omission in the publication or service of any notification, notice or order, unless material injury is done to any person by such defect or omission.

Proceedings
not to be
invalidated
by irregularities.

35. (1) The ¹[State Government] may, after previous publication, make rules to carry out the purposes of this Act. •

Power of
State
Govern-
ment to
make “
rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[State Government] may make rules—

- (a) fixing the rate of interest to be paid, and the dates from and to which interest on all recoverable deposits, or advances are to be paid under sub-clause (e) of clause (2) of section 2 ;
- (b) fixing the amount of the costs of the work involved in a scheme in excess of which such scheme shall be deemed to be a major scheme, and prescribing the circumstances under which the Collector may certify a scheme to be a major scheme ;
- (c) prescribing the manner of publication of a notice under section 6, a copy of the final statement of cost and the map under section 18, sub-section (2), and a copy of the detailed statement under section 20, sub-section (1), and prescribing the time within which objections and suggestions are to be made under section 6 ;
- (d) prescribing the manner in which the objections or suggestions referred to in section 7 and section 10, sub-section (1), shall be considered ;
- (e) prescribing the manner in which a scheme may be modified, if necessary, under section 5, sub-section (2), and clause (b) of sub-section (1) of section 8 ;
- (f) determining the constitution of the committee referred to in section 9, and regulating the conduct of business at meetings of the committee ;
- (g) prescribing the manner and conditions for financing and distributing the cost of the work involved in a scheme under section 8, sub-section (1), and section 10, sub-section (2) ;
- (h) prescribing the manner in which the Engineer shall prepare the map under clause (b) of section 17 ;
- (i) prescribing the manner in which the Collector shall determine the rates at which the cost of a scheme shall be recoverable under clause (iii) of sub-section (1) of section 18, and the instalments, if any, by which such cost shall be recovered ;

¹See foot-note 2 on page, 36, ante.

46 The Bengal Agricultural and Sanitary Improvement Act, 1920.

[Ben. Act VI of 1920.]

(Miscellaneous.—Section 36.)

- (j) prescribing the manner in which the Collector shall recover costs under section 21, and arrears under section 22 ;
- (k) prescribing the conditions subject to which lands and works shall vest in a local authority, or person under section 29 ;
- (l) for the maintenance of works under section 30 ;
- (m) determining the manner in which the sums referred to in section 31 shall be administered ;
- (n) prescribing the forms of accounts, surveys, plans, maps, estimates, statements, and reports ;
- (o) regulating the powers and duties of any officer, or person under this Act.

Repeal.

36. The following enactments are hereby repealed, namely :—

- (a) the Bengal Drainage Act, 1880 ;
- (b) the Bengal Drainage (Amendment) Act, 1902 ; and
- (c) the Bengal Sanitary Drainage Act, 1895 :

Ben. Act
VI of 1880.
Ben. Act
II of 1902.
Ben. Act
VIII of
1895.

Provided that in the case of any scheme or work which has, at the commencement of this Act, been completed under the Bengal Drainage Act, 1880, or the Bengal Sanitary Drainage Act, 1895, the costs of such scheme, or work shall be recoverable in accordance with the provisions of those Acts, as if this Act had not been passed :

Provided also that any scheme or work of whatever nature commenced under either of the aforesaid Acts, and not completed before the commencement of this Act, shall, so far as it is not inconsistent, be deemed to have been commenced under this Act.

Bengal Act VIII of 1920

[The Indian Red Cross Society (Bengal Branch) Act, 1920.]¹

AMENDED

.. { West Ben. Act XLVII of 1950.
West Ben. Act XIII of 1958.
West Ben. Act XXXI of 1960.

ADAPTED

(a) The Government of India
(Adaptation of Indian
Laws) Order, 1937.
(b) The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
(c) The Adaptation of Laws
Order, 1950.

(3rd November, 1920.)

An Act to constitute a Bengal Provincial Branch of the Indian Red Cross Society.

WHEREAS it is expedient to provide for the future administration of various moneys, properties and gifts received in Bengal from the public during the late war, for the purpose of medical and other aid to sick and wounded and for comforts to troops and other purposes, and now held by or in trust for "The Lady Carmichael's Bengal Women's War Fund and 'Our Day' Fund (Bengal Branch)";

AND WHEREAS it is expedient to constitute a Bengal Provincial Branch of the Indian Red Cross Society to continue and extend the work carried on during the war by "The Lady Carmichael's Bengal Women's War Fund and 'Our Day' Fund (Bengal Branch)";

It is hereby enacted as follows :—

1. This Act may be called the Indian Red Cross Society (Bengal Branch) Act, 1920. Short title.

2. There shall be constituted in ²[West Bengal] by this Act a society known as the Bengal Provincial Branch of the Indian Red Cross Society (hereinafter called the Society). The first members thereof shall be appointed either by name or by office, by the ³[State Government] of ²[West Bengal]. They shall be in number not less than twenty-five or more than fifty. Constitution of Society.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1920, Pt. IV, pages 88 and 84; and for Proceedings in Council, see *ibid.*, Pt. IVA, pages 678-679, and page 802 and pages 948-944.

²The words "West Bengal" were substituted for the word "Bengal" by paragraph (2) of Article 8 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The words "Provincial Government" were originally substituted for the word "Governor" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

incorporation.

3. The first members of the Society so appointed and all persons who may hereafter become members thereof, so long as they continue so to be, are hereby constituted a body corporate under the name of the Bengal Provincial Branch of the Indian Red Cross Society, and the said body shall have perpetual succession and a common seal with power to hold and acquire property, movable and immovable, and shall sue and be sued by the said name.

Appointment of Managing Body.

4. As soon as conveniently may be after their appointment, the first members of the Society shall, at a meeting to be summoned by the ¹[State Government] of ²[West Bengal] and held for that purpose, appoint persons from among themselves to be the first members of the Managing Body.

* * * * *

Dissolution and transfer of property of Lady Carmichael's

5. Upon the appointment of the Managing Body,—

(a) the Committees of the Lady Carmichael's Bengal Women's War Fund and "Our Day" Fund (Bengal Branch), shall be dissolved ;

(b) all property, movable or immovable, of, or belonging to the said Funds or held in trust for them, shall vest in the Society, and be applied by the Managing Body of the Society to the objects and purposes hereinafter set out ; and

(c) all the debts and liabilities of the said Funds shall be transferred to the Society and shall thereafter be discharged and satisfied by it out of the aforesaid property, and each and every member of the Committee of the said Funds shall be wholly discharged therefrom.

Women's War Fund and "Our Day" Fund (Branch).

Management and control.

6. Subject to the provisions of this Act, the Managing Body shall be in charge of the management of the affairs of the Society and of the administration of the properties and assets thereof.

¹ See foot-note 3 on page 47, *ante*.

² See foot-note 2 on page 47, *ante*.

³ The words "The number of members of the Managing Body shall not be less than six or more than thirteen" were omitted by sec. 2 of the Indian Red Cross society (Bengal Branch) (Amendment) Act, 1968 (West Ben. Act XXXI of 1968).

⁴ Section 6 was substituted for the existing section 6 by sec. 8, *ibid*.

The Indian Red Cross Society (Bengal Branch) Act, 1920. 49
of 1920.]

(Sections 6A, 6B.)

6A. [Position after the commencement of the Indian Red Cross Society (Bengal Branch) (Amendment) Ordinance, 1950.]—
Omitted by sec. 4 of the Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1963 (West Ben. Act XXXI of 1963).

¹6B. The Managing Body shall consist of the following members, namely :—

Composition of the Managing-Body.

- (a) Chairman of the Managing Body appointed by the President of the Society from among the members of the Society ;
- (b) Treasurer of the Society appointed by the President of the Society from among the members of the Society ;
- (c) the Vice-Chancellor of the University of Calcutta, *ex-officio*, or a person nominated by him ;
- (d) the Mayor of the Corporation of Calcutta, *ex-officio*, or a person nominated by him ;
- (e) the Director of Health Services, West Bengal, *ex-officio* ;
- (f) a representative of the State Government, not being the Director of Health Services, West Bengal, appointed by the State Government ;
- (g) the Chairman of the St. John Ambulance Association, West Bengal State Centre, *ex-officio* ;
- (h) the President of the Bengal Chamber of Commerce, *ex-officio* ;
- (i) the President of the Bengal National Chamber of Commerce, *ex-officio* ;
- (j) the President of the Indian Chamber of Commerce, *ex-officio* ;
- (k) the President of the Bharat Chamber of Commerce, *ex-officio* ;
- (l) three representatives from among the members of the Society in the districts, appointed by the State Government ;
- (m) one representative from among the members of the Society in Calcutta, appointed by the State Government.

¹Section 6A, 6B, 6C, 6D, 6E and 6F were originally inserted by sec. 8 of the Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1950 (West Ben. Act XLVII of 1950). Thereafter secs. 6A and 6D were omitted by sec. 4 and sec. 7, respectively, and secs. 6B and 6F were substituted by secs. 5 and 9, respectively, of the Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1963 (West Ben. Act XXXI of 1963).

50 *The Indian Red Cross Society (Bengal Branch) Act, 1920.*

[Ben. Act VIII

(Sections 6C—6E.)

President.

¹6C. (1) The Governor of West Bengal shall be the President of the Society.

²(2) * * * * *

²(3) * * * * *

6D. [Vacancies.]—Omitted by sec. 7 of the *Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1963 (West Ben. Act XXXI of 1963.)*

Power to make rules and power to act notwithstanding vacancy.

¹6E. (1) The Managing Body may, subject to other provisions of this Act, make rules for the administration, management and control of the Society and for all matters ancillary or incidental to those purposes, and such rules may, *inter alia*, make provisions for all or any of the following, namely :—

- (a) the grades of members and the terms and conditions of different grades of membership ;
- (b) the appointment of associates and the terms and conditions of associateship ;
- (c) the powers to be exercised by the Managing Body ;
- (d) the procedure of the Society and the Managing Body ;
- (e) the constitution of Committees and the delegation of powers to them ;
- (f) the constitution of Branches of the Society and the delegation of powers to them ;
- (g) the acquisition and the disposal of properties on behalf of the Society ;
- (h) entering into agreements and contracts on behalf of the Society and executing documents on its behalf and the affixing of the seal of the Society ;
- (i) investing the funds of the Society ;
- (j) the audit and the accounts of the funds of the Society ;
- (k) the relations with the Indian Red Cross Society and contribution of sums to that Society ;
- (l) the interpretation of rules made under this sub-section.

²(2) Rules made under sub-section (1) shall not come into force unless assented to by the President of the Society and shall be published in the *Official Gazette* after such assent is obtained.

¹See foot-note 1 on page 49, *ante*.

²Sub-sections (2) and (3) of sec. 6C, were omitted by sec. 6 of the *Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1963 (West Ben. Act XXXI of 1963)*.

²Sub-section (2) of sec. 6E, was substituted for the existing sub-section (2) by sec. 8 of the *Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1963 (West Ben. Act XXXI of 1963)*.

of 1920.]

(Section 6F.)

(3) The Managing Body shall be deemed to be duly constituted and shall have power to act, to meet, to transact business and exercise its powers under sub-sections (1) and (2), notwithstanding any vacancy among its members.

Transitory
provisions
and
savings.

¹6F. Notwithstanding anything contained in this Act—

- (a) the rules in Schedule I shall continue to be in force as if they were made under sub-section (1) of section 6E until they are amended or rescinded under that section,
- (b) all standing orders made under any rule which were in force immediately before the commencement of the Indian Red Cross Society (Bengal Branch) (Amendment) Ordinance, 1950 and are not inconsistent with the provisions of this Act shall continue to be in force, and
- (c) all appointments made under any such rule shall be deemed to have been validly made under this Act and the rules framed thereunder.

West Ben.
Ord. VIII
of 1950.

7. Notwithstanding anything contained in any appeal for subscriptions or gifts to or for the purposes of the said Funds, the Managing Body may in its discretion apply—

Purposes
to which
the funds
of the
Society
may be
applied.

- (a) either the corpus or the income or any part of such corpus or income of any property vested in it under clause (b) of section 5 for the relief of sickness, suffering or distress caused by the operation of war in India or in any other country in which Expeditionary Forces from India may from time to time be employed, and for purposes cognate to that object, and in maintaining Red Cross Depots for military purposes ;
- (b) the income only of any such property but not the corpus or any part thereof for the relief of sickness or suffering ²[in India or anywhere else] whether due to the operation of war or not, or in pursuance of any of the following objects, namely :—

- ³(1) aid to the sick and wounded members of the Armed Forces of the Union of India ;
- (2) aid to the demobilized sick and wounded members of the Armed Forces of the Union of India ;
- (3) care of those suffering from tuberculosis ;
- (4) maternity and child welfare ;
- (5) Junior Red Cross ;
- (6) nursing and ambulance work ;

¹Section 6F was substituted for the existing sec. 6F by sec. 9 of the Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1968 (West Ben. Act XXXI of 1968).

²Substituted for the words "in India" by sec. 10(a) of the Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1968 (West Ben. Act XXXI of 1968).

³Clauses (1) to (9) were substituted for the existing sub-clauses (1) to (8) by sec. 8(a) of the Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1968 (West Ben. Act XIII of 1968).

(Sections 8, 9.)

- (7) provision of relief for the mitigation of suffering caused by ¹[distress], epidemics, earthquakes, famines, floods or other calamity ;
- (8) work parties to provide comforts and necessary garments, etc., for hospitals and health institutions ;
- (9) the improvement of health, prevention of disease and mitigation of suffering and such other cognate objects as may be approved by the Society from time to time;
- ²(10) the expenses of management of the Society ; and
- ³(11) the representation of the Society on or at Committees formed for furthering objects similar to those of the Society :

Provided that nothing contained in this section shall prevent the Managing Body from applying any sums received by the Society for a specific purpose to that purpose.

Power to receive other gifts and to distribute funds through other societies.

8. Nothing in this Act shall prevent the Society from—

- (a) receiving gifts of whatever nature to or for all or any of the purposes to which the funds vested in the Society under this Act may be applied under the provisions of section 7 ;
- (b) allocating any funds in its hands to other societies or associations to be spent by them in furtherance of all or any of the purposes to which the funds vested in the Society under this Act may be applied under the provisions of section 7.

Managing Body may transfer the balance amount due to East Pakistan Red Cross Society through the Indian Red Cross Society.

- 9. (1) Notwithstanding anything contained in this Act, the Managing Body may transfer to the East Bengal Provincial Branch of the Pakistan Red Cross Society (hereinafter referred to as the East Pakistan Red Cross Society), through the Indian Red Cross Society, the sum of rupees forty-eight thousand, five hundred and sixty-seven, being the balance amount due to the East Pakistan Red Cross Society, as shown in Schedule II.
- (2) Upon the transfer of the amount referred to in sub-section (1) to the East Pakistan Red Cross Society, the Society shall be freed and discharged from all obligations in respect of anything to be done in East Pakistan or any part thereof.

¹This word was inserted by sec. 10(b) of the Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1968 (West Ben. Act XXXI of 1968).

²Existing sub-clauses (9) and (10) were re-numbered as sub-clauses (10) and (11) by sec. 8 (b) of the Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1968 (West Ben. Act XIII of 1968).

³Section 9 was inserted by sec. 4, *ibid.*

(Schedule I.)

¹[SCHEDULE I.]

[See section 6F(1).]

Rules under sub-section (1) of section 6F of the Indian Red Cross Society (Bengal Branch) Act, 1920.

CHAPTER I.

INTRODUCTORY.

- | | | |
|------------------------------|---|--------------|
| | 1. These rules may be called the Rules of the Bengal Provincial Branch of the Indian Red Cross Society. | Citation. |
| | 2. In these rules, unless the context requires otherwise— | Definitions. |
| Ben. Act VIII of 1920. | (a) "the Act" means the Indian Red Cross Society (Bengal Branch) Act, 1920 ; | |
| | (b) "the chairman" means the Chairman of the Managing Body ; | |
| | (c) "the Managing Body" means the Managing Body of the Society ; | |
| West Ben. Ord. VIII of 1950. | (d) "the Ordinance" means the Indian Red Cross Society (Bengal Branch) (Amendment) Ordinance, 1950 ; | |
| | (e) "the President" means the President of the Society ; | |
| | (f) "the Society" means the Bengal Provincial Branch of the Indian Red Cross Society. | |

CHAPTER II.

MEMBERS AND ASSOCIATES.

- | | | |
|--|--|---------------------------|
| | 3. In addition to <i>ex-officio</i> members, there shall be the following grades of members of the Society, namely :— | Grades of members. |
| | (a) Honorary Vice-Presidents, | |
| | (b) Patrons, | |
| | (c) Vice-Patrons, | |
| | (d) Ordinary members. | |
| | 4. A person shall be an Honorary Vice-President if he subscribes a sum of Rs. 10,000 or more to the funds of the Society. | Honorary Vice-Presidents. |
| | 5. A person shall be a Patron if he subscribes a sum less than Rs. 10,000 but not less than Rs. 2,000 to the funds of the Society. | Patrons. |
| | 6. A person shall be a Vice-Patron if he subscribes a sum less than Rs. 2,500 but not less than Rs. 500 to the funds of the Society. | Vice-Patrons. |

¹Substituted for the words "THE SCHEDULE" by sec. 5 of the Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1958 (West Ben. Act XIII of 1958).

54 *The Indian Red Cross Society (Bengal Branch) Act, 1920.*

[Ben. Act VIII

(Schedule I.)

Ordinary
members.

7. A person shall be an ordinary member if he signifies his intention to become a member and pays an annual subscription to the funds of the Society of Rs. 12 or a consolidated subscription of Rs. 150.

Power to
elect
members.

8. The Managing Body may elect any person for services rendered to the Society to be a member of any grade referred to in clauses (a), (b), (c) or (d) of rule 3.

Existing
members to
continue.

9. A person who immediately before the commencement of the Ordinance was a Honorary Vice-President, a Patron, a Vice-Patron or a member of the Society shall continue to be a Honorary Vice-President, a Patron, a Vice-Patron or an ordinary member, as the case may be.

Associates.

10. (1) A person shall be an associate if he signifies his intention to become an associate and pays an annual subscription of Rupee I or a consolidated subscription of Rs. 50 to the funds of the Society.

(2) No associate shall be a member of the Society.

(3) A person who was an associate immediately before the commencement of the Ordinance shall continue to be an associate.

CHAPTER III.

GENERAL MEETINGS.

Annual
and extra-
ordinary
general
meetings.

11. (1) An annual general meeting of the Society shall be held every year at the headquarters of the Society upon a date to be fixed by the Chairman.

(2) An extraordinary general meeting of the Society may be convened at any time by the President for any purpose connected with the Society.

Notice.

12. Notice of every general meeting of the Society, whether annual or extraordinary, shall be given to all members of the Society at least fifteen days before the date fixed for the meeting and the business to be transacted at such meeting shall be specified in the notice.

Business
which may
be transac-
ted at
general
meetings
and
quorum.

13. (1) (a) At each annual general meeting of the Society—

¹(i) * * * *

¹(ii) * * * *

(iii) the annual report, the annual accounts and the budget shall be presented and considered ; and

(iv) any other business specified in the notice may be transacted with the assent of the President.

¹Sub-clauses (i) and (ii) were omitted by sec. 11(a) of the Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1968 (West Ben. Act XXXI of 1968).

(Schedule I.)

(b) The annual accounts shall be circulated to all members of the Society along with the notice for the annual general meeting and, after being passed at the annual general meeting, shall be published in the Press.

(2) At an extraordinary general meeting of the Society no business not specified in the notice for the meeting, shall be transacted.

(3) The quorum for a general meeting of the Society, whether annual or extraordinary, shall be ten.

14. The President shall preside at every general meeting of the Society, whether annual or extraordinary, and in the absence of the President, the Chairman or some other person appointed by the Chairman shall preside over such general meeting.

Presiding
officer.

15. (1) ¹[At every general meeting] of the Society, whether annual or extraordinary, all questions shall be decided by votes of the members of the Society present, taken by show of hands.

Voting.

(2) In case of an equality of votes, the person presiding at the meeting shall have a casting vote.

CHAPTER IV.

MANAGING BODY.

16. The Managing Body shall every year, at the first meeting held after the annual general meeting of the Society, elect from among themselves a Vice-Chairman, who in the absence of the Chairman shall conduct the duties of the Chairman and exercise his power.

Vice-
Chairman.

17. An ordinary meeting of the Managing Body shall be held at least once a quarter at such time and at such place as may be fixed by the Chairman. At the meeting held in the first quarter of the year the annual budget of the Society shall be dealt with.

Quarterly
meetings.

18. An extraordinary meeting of the Managing Body may be called at any time by the Chairman.

Extra-
ordinary
meeting.

19. Upon a requisition in writing made by any three members of the Managing Body, the Chairman shall call an extraordinary meeting.

Requisi-
tion for
meetings.

20. Seven days' clear notice of any meeting of the Managing Body, specifying the place, day and hour of the meeting and the general nature of the business to be transacted, shall be given to every member of the Managing Body, by notice sent by post ; provided that the accidental omission to give such notice to any of the members shall not invalidate any resolution passed at such meeting.

Notice of
meeting.

¹These words were substituted for the words "Subject to the provisions of clause (i) of section 6B of the Act, at every general meeting" by sec. 11 (b) of the Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1963. (West Ben. Act XXXI of 1963).

(Schedule I.)

Quorum.

21. At meetings of the Managing Body three members shall form a quorum.

Adjourned meetings.

22. If no quorum is present within ten minutes of the time fixed for a meeting of the Managing Body, the meeting shall be adjourned for one week to the same time and place. At such adjourned meeting the business for which the meeting was called may be transacted, whether a quorum is present or not.

Casting vote.

23. In the event of an equality of votes at any meeting of the Managing Body, the Chairman shall have a casting vote.

General powers of the Managing Body.

24. (1) The Managing Body may, subject to the provisions of the Act, exercise all such powers and do all such things as may be exercised or done by the Society, except in so far as express provision is made otherwise by these rules.

(2) In particular and without prejudice to the provisions of sub-rule (1), the Managing Body shall have the power—

(a) to acquire whether by purchase or lease any immovable property ;

(b) to sell, lease, or otherwise dispose of any immovable property vested in the Society on such terms as the Managing Body may consider beneficial to the Society ; and

(c) to invest the funds of the Society and from time to time as they may think expedient to change such investments.

Seal.

25. The seal of the Society shall not be affixed to any instrument except in pursuance of a resolution of the Managing Body and at least two members of the Managing Body shall sign every instrument to which the seal is affixed.

Officers.

26. (1) The Managing Body shall appoint the Director and the General Secretary.

(2) All other appointments shall be made by the Chairman, subject to the control of the Managing Body.

Standing orders.

27. The Managing Body shall have power to make standing orders regulating its own procedure, the procedure of Committees appointed by it, and the duties of the Officers of the Society.

Representation on Indian Red Cross Society.

28. The Managing Body may, from time to time, appoint one or more members of the Society to represent the Society at meetings of the Indian Red Cross Society or to serve on Committees convened by that Society for the consideration of objects which concern the Society, and may sanction all reasonable expenditure for such purposes.

(Schedule I.)

29. The Managing Body shall pay to the Managing Body of the Indian Red Cross Society towards the general expenses of that Society 10 *per cent.* of all subscriptions or consolidated subscriptions received from members and associates, subject to the limitation that the amount so payable on account of any single subscription shall not exceed Rs. 1,000. This rule shall not apply to gifts or payments other than subscriptions received by the Society.

Contribution to Indian Red Cross Society.

CHAPTER V.

COMMITTEES.

30. The Managing Body shall from among the members of the Society annually constitute a Medical Committee, consisting of such members of the Society as it may determine and may, in its discretion, constitute such other Committees with such powers as it may think necessary.

Appointment of Committees.

31. The Medical Committee shall advise upon all technical questions which may be referred to it either by the Managing Body or the General Secretary,

Duties of Medical Committee.

32. The proceedings of all Committees shall be laid before the Managing Body.

Proceedings of Committees.

CHAPTER VI.

INTERPRETATION.

33. If any doubt arises about the interpretation of these rules, the question may be referred to the President and the decision of the President shall be final,

Interpretation.

¹SCHEDULE II.

(See Section 9.)

Statement showing the share of the East Pakistan Red Cross Society in the Funds specified in column 2.

Serial No.	Name of the Fund.	Divisible amount.	Percentage.	East Pakistan's share.	Interest from 15th August, 1947 to 31st December, 1953.	Total.	Balance amount due to East Pakistan Red Cross Society.
1	2	3	4	5	6	7	8
		Rs.		Rs.	Rs.	Rs.	
1.	Red Cross Branch—Capital.	6,94,411	64·8	4,49,978	1,46,288	5,96,266	
2.	Maternity and Child Welfare Building Fund—						
	(i) Contributions from Dacca and Jessore.	42,000	100·00	42,000	...	42,000	
	(ii) Appeal Fund.	1,75,081	1·44	2,521	...	2,521	
3.	Appeal Fund	19,74,337	1·44	28,430	2,716	31,146	
4.	Headquarters' Grant from 15th August, 1947 to the 31st December, 1947	9,311	64·8	6,033	..	6,033	
5.	St. John Ambulance Association	23,491	64·8	15,222	1,818	17,040	
	Total	29,18,631		5,44,184	1,50,822	6,95,006	

Deduct—

(i) Total expenses incurred for East Pakistan after 14th August, 1947—Rs. 1,57,996.

(ii) Advance paid by way of adjustment—Rs. 4,88,443 .. 6,46,439

Balance Rs. 48,567.

¹Schedule II was added by sec. 6 of the Indian Red Cross Society (Bengal Branch) (Amendment) Act, 1959 (West Ben. Act XIII of 1959).

Bengal Act II of 1922

(The Bengal Children Act, 1922.)

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Bengal Act II of 1922¹

(The Bengal Children Act, 1922.)²

SUPPLEMENTED . .	Act XXXV of 1925.
REPEALED IN PART	Ben. Act VI of 1933.
AMENDED . .	{ Ben. Act V of 1923.
	{ Ben. Act III of 1929.
	(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED	{ (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
	(c) The Adaptation of Laws Order, 1950.

(29th March, 1922.)

An Act to make further provision for the custody, trial and punishment of youthful offenders and for the protection of children and young persons.

WHEREAS it is expedient to provide further for the custody, trial and punishment of youthful offenders and for the protection of children and young persons ;

And whereas the previous sanction of the Governor General has been obtained, under section 80A, sub-section (3), of the Government of India Act, to the passing of this Act ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Children Act, 1922.

(2) It shall come into force ²[in whole or in part] on such date as the ³[State Government] may, by notification in the ⁴[Official Gazette], direct, ⁵[and for this purpose different dates

Short title.
commence-
ment and
local
extent.

¹This Act should be read with sec. 51 of the West Bengal Children Act, 1959 (West Ben. Act XXX of 1959) and notification (1) No. 1955 S. W. /IH—15/60, dated 22. 6. 61. (2) No. 284—S. W. /L. H.—43/61, dated 8. 2. 63 and (3) No. 479—S. W./4A—4/63, dated 15. 3. 63, which bring certain sections of the latter Act, into force in Calcutta, Howrah, other places in the districts of Howrah and 24 Parganas and other areas.

²For Statement of Objects and Reasons, see the *Calcutta Gazette*, 1921, Pt. IV, page 21 ; and for Proceedings in Council, see the Bengal Legislative Council Proceedings, 1921, Vol. III, pages 151-156, and Vol. IV, page 123 ; and also Vol. VII, No. I, 1922 ; pages 22-107 and 138-162.

This Act shall, so far as regards the appellate and revisional jurisdiction conferred on the High Court in Calcutta be as valid as if this Act had been passed by the Indian Legislature, see the Madras, Bengal and Bombay Children (Supplementary) Act, 1925 (XXXV of 1925), sec. 2.

³These words were inserted by sec. 2 of the Bengal Children (Amendment) Act, 1923 (Ben. Act V of 1923).

⁴The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937 ; and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶These words, brackets and figure were added by sec. 2 of the Bengal Children (Amendment) Act, 1923 (Ben. Act V of 1923).

[Ben Act. II]

(Chapter I.—Preliminary.—Sections 2, 3.)

may be appointed for different provisions of this Act and for different parts of the area defined in sub-section (3)].

(3) Subject to the provisions of section 27, this Act extends in the first instance to the town of Calcutta, as defined in section 3 of the Calcutta Police Act, 1866, the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, the port of Calcutta as defined by notification under section 5 of the Indian Ports Act, 1908, and the Municipality of Howrah, but the ¹[State Government] may, by notification in the ²[*Official Gazette*], extend it to any other town or place in ³[West Bengal].

Ben. Act
IV of 1866.
Ben. Act
II of 1866.
XV of
1908.

Repeal of
Act VIII
of 1897.

2. * The Reformatory Schools Act, 1897, with the exception of section 15 thereof, shall be deemed to be repealed—

VIII of
1897.

- (a) in the area to which this Act extends in the first instance under the provisions of section 1, sub-section (3), from the date of the commencement of this Act, and
- (b) in any other town or place to which this Act may hereafter be extended under section 1, sub-section (3), from the date of such extension.

Defini-
tions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) “child” means a person under the age of fourteen years, and when used in reference to a child sent to an industrial school it applies to that child during the whole period of detention, notwithstanding that the child attains the age of fourteen years before the expiration of that period ;

(2) “guardian” in relation to a child, young person, or youthful offender, includes any person who, in the opinion of the Court having cognizance of any case in relation to the child, young person, or youthful offender, or in which the child, young person, or youthful offender is concerned, has for the time being the charge of or control over the child, young person, or youthful offender ;

(3) “industrial school” means an industrial school established or certified by the ¹[State Government] under section 6 ;

*(3a) “Juvenile Court” means a separate Court established under sub-section (1) of section 37, and includes a Court sitting in the manner provided by sub-section (2) of that section ;

¹ See foot-note 3 on page 61, *ante*.

² See foot-note 4 on page 61, *ante*.

³ The words “West Bengal” were substituted for the word “Bengal” by paragraph (2) of Article 8 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴ Clause (3a) was inserted by sec. 2 of the Bengal Children (Amendment) Act, 1929 (Ben. Act III of 1929).

of 1922.]

(Chapter I.—Preliminary.—Sections 4, 5.)

(4) "prescribed" means prescribed by rules under this Act ;

(5) "reformatory school" means a reformatory school established or certified by the ¹[State Government] under section 6 ;

(6) "young person" means a person who is fourteen years of age or upwards and under the age of sixteen years ; and

(7) "youthful offender" means any person who has been convicted of an offence punishable with transportation or imprisonment, and who at the time of such conviction was under the age of sixteen years.

4. The powers conferred on Courts by this Act shall be exercised only by—

Jurisdiction.

(a) the High Court,

(b) a Court of Session,

(c) a Court of an Additional Sessions Judge and of an Assistant Sessions Judge,

²(d) a separate Court established under sub-section (1) of section 37,

(e) a District Magistrate,

(f) a Subdivisional Magistrate,

(g) a Presidency Magistrate,

(h) a Magistrate of the first class,

(i) any Magistrate of the second class specially empowered by the ¹[State Government] to exercise all or any of such powers,

and may be exercised by such Courts whether the case comes before them originally or in appeal or revision.

5. (1) When any Magistrate not empowered to pass an order under this Act is of opinion that a child or young person brought before him or convicted by him is a proper person to be sent to a reformatory or industrial school or to be dealt with in any other manner in which the case may be dealt with under this Act, he shall record such opinion, and submit his proceedings and forward the child or young person to the nearest Juvenile Court or Court of a Magistrate having authority to exercise powers under this Act and having jurisdiction in the case.

Procedure when Magistrate is not empowered to pass an order under this Act.

(2) The Court to which the proceedings are submitted under sub-section (1) may make such further inquiry (if any) as it may think fit and may make such order dealing with the case as such Court might have made if the child or young person had originally been brought before it.

¹See foot-note 8 on page 61, *ante*.

²Clause (d) was substituted for the original clause (d) by sec. 8 of the Bengal Children (Amendment) Act, 1929 (Ben. Act III of 1929).

(Chapter II.—Reformatory and Industrial Schools.—
Sections 6—8.)

CHAPTER II.

REFORMATORY AND INDUSTRIAL SCHOOLS.

Establish-
ment and
certifica-
tion of
schools.

6. (1) The ¹[State Government] may establish and maintain reformatory and industrial schools for the reception of youthful offenders and children who may be sent there in pursuance of this Act.

(2) The ¹[State Government], on the application of or with the consent of the managers of any reformatory or industrial school not established under sub-section (1), may certify that such reformatory or industrial school is fit for the reception of youthful offenders or children to be sent there in pursuance of this Act; and may pay to the managers of such school such contributions as the ¹[State Government] may think fit for the maintenance thereof.

ment of
schools.

7. (1) For the control and management of every reformatory or industrial school established under section 6, sub-section (1), a superintendent and a committee shall be appointed by the ¹[State Government], and such superintendent and committee shall be deemed to be the managers of the school for the purposes of this Act.

(2) Every school certified under section 6, sub-section (2), shall be under the management of such persons as may be approved by the ¹[State Government], and the persons so approved shall be deemed to be the managers of the school for the purposes of this Act.

(3) Where girls and boys are accommodated in any reformatory or industrial school, the accommodation provided for girls shall be in a separate building and compound.

Inspection
of schools,

8. (1) The ¹[State Government] may appoint a chief inspector of reformatory and industrial schools and so many inspectors and assistant inspectors as ²[it thinks] fit to assist the chief inspector; and every person so appointed to assist the chief inspector shall have such of the powers and duties of the chief inspector as the ¹[State Government] ³[directs], but shall act under the direction of the chief inspector.

(2) Every reformatory and industrial school shall, at least once in every six months, be inspected by the chief inspector, or by an inspector or assistant inspector:

Provided that when any such school is for the reception of girls only and such inspection is not made by the chief inspector, the inspection shall, when practicable, be conducted by a woman,

¹ See foot note 8 on page 61, *ante*.

² These words were substituted for the words "they think" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³ This word was substituted for the word "direct", *ibid*.

of 1922.]

*(Chapter II.—Reformatory and Industrial Schools.—
Sections 9—13.)*

9. The chief inspector, or an inspector, or an assistant inspector authorized in that behalf by the chief inspector, may, at any time, enter and inspect any reformatory or industrial school in all its departments.

Power of
inspectors.

10. Any qualified medical practitioner empowered in this behalf by the ¹[State Government] may visit any reformatory or industrial school at any time, with or without notice to its managers or other person in charge thereof, in order to report to the chief inspector on the health of the inmates and the sanitary condition of the school :

Medical
inspection.

Provided that, in the case of a school for girls only, such practitioner shall, when practicable, be a woman.

11. The ¹[State Government], if dissatisfied with the condition, rules, management, or superintendence of a certified school, may, at any time, by notice served on the managers of the school, declare that the certificate of the school is withdrawn as from the time specified in the notice, and, at that time, the withdrawal of the certificate shall take effect, and the school shall cease to be a certified school :

Power of
State Go-
vernment
to with-
draw certi-
ficate.

Provided that the ¹[State Government] may, if ²[it thinks] fit, instead of so withdrawing the certificate, by notice served on the managers of the school, prohibit the admission of youthful offenders or children to the school for such time as may be specified in the notice or until the notice is revoked :

Provided also that before the issue of notice under this section or under the first proviso thereto a reasonable opportunity shall be given to the managers of the school to show cause why the certificate shall not be withdrawn or admission to the school not be prohibited, as the case may be.

12. The managers of a certified school, on giving six months' notice in writing to the ¹[State Government], through the chief inspector, of their intention so to do, may resign the certificate of the school, and, accordingly, at the expiration of six months from the date of the receipt of the notice by the chief inspector (unless before that time the notice is withdrawn), the resignation of the certificate shall take effect, and the school shall cease to be a certified school.

Resigna-
tion of
certificate
by
managers.

13. No youthful offender or child shall be received into a certified school in pursuance of this Act after the date of the receipt by the managers of the school of a notice of withdrawal of the certificate for the school, or after the date of the issue of a notice of resignation of the certificate ; but the obligation of the

Effect of
withdrawal
or resigna-
tion of
certificate.

¹ See foot-note 3 on page 61, *ante*.

² See foot-note 2 on page 64, *ante*.

[Ben. Act II]

(Chapter II.—Reformatory and Industrial Schools.—

Chapter III.—Youthful Offenders.—Sections 14—17.)

managers of the school, mentioned in section 16, to teach, train, lodge, clothe and feed any youthful offenders, or children detained in the school at the respective dates aforesaid shall, except so far as the ¹[State Government] otherwise ²[directs], continue until the withdrawal or resignation of the certificate takes effect.

Disposal
of inmates
when
school
ceases to
be certified.

14. When a school ceases to be a certified school, the youthful offenders or children detained therein shall, by order of the ¹[State Government], be discharged absolutely or on such conditions as the ¹[State Government] may impose or be transferred to some other reformatory or industrial school or auxiliary home in accordance with the provisions of this Act.

Auxiliary
homes.

15. The ¹[State Government] may establish auxiliary homes for the reception of any inmates or any classes of inmates of reformatory or industrial schools, or may certify any other such home established before or after the passing of this Act by any other persons, and the certificate may be withdrawn or resigned in like manner as a certificate of a reformatory or industrial school; and every such home shall, for such purposes as may be specified by the ¹[State Government], be treated as part of the school or schools to which it is attached.

Liabilities
of
managers.

16. The managers of a certified school may decline to receive any youthful offender or child proposed to be sent to them in pursuance of this Act, but when they have once accepted any such offender or child, they shall be deemed to have undertaken to teach and train and, further, if the school is residential, to lodge, clothe and feed him during the whole period for which he is liable to be detained in the school, or until the withdrawal or resignation of the certificate of the school takes effect:

Provided that the ¹[State Government] may, on an application made in that behalf by the managers of a certified school, arrange for the transfer of such offender or child to any other reformatory or industrial school.

CHAPTER III.

YOUTHFUL OFFENDERS.

Bail of
child or
young
person.

17. When a person apparently under the age of sixteen years is arrested and cannot be brought forthwith before a Court, the officer in charge of the police-station to which such person is brought may in any case and shall, unless the charge is one of culpable homicide or any other offence punishable with death or transportation, release him on bail, with or without sureties:

Provided that when a girl apparently under the age of sixteen years is arrested, the officer in charge of a police-station who has made the arrest, or beforewhom the girl has been produced, shall

¹ See foot-note 8 on page, 61, ante.

² See foot-note 8 on page 64, ante.

of 1922.]

(Chapter III.—Youthful Offenders.—Sections 18—20.)

release her at once if any person, who in his opinion is a sufficient surety, enters into a bond for such sum of money as the officer considers sufficient, to produce her before the Court and to appear in her stead, if required, at the police-station.]

18. (1) When a person apparently under the age of sixteen years having been arrested is not released on bail as provided in section 17, the officer in charge of the police-station shall cause him to be detained in a place other than a police-station or jail in the prescribed manner, until he can be brought before a Court.

Custody of child or young person not released on bail.

(2) No police-officer shall, however, detain in custody any such person for a longer period than is reasonable under all the circumstances of the case; and such period shall not, in the absence of a special order of a Court, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Court.

19. A Court, on remanding or committing for trial a child or young person who is not released on bail as provided in section 17, shall, instead of committing him to prison, order him to be detained in a place other than a police-station or jail in the prescribed manner, for the period for which he is remanded.

Remand or commitment to custody.

20. (1) When a child or young person is charged with any offence, or when a child is brought before a Court on an application for an order to send him to an industrial school, his parent or guardian may, in any case, and shall, if he can be found and resides within a reasonable distance and the person so charged or brought before the Court is a child, be required to attend at the Court before which the case is heard, during all the stages of the proceedings, unless the Court is satisfied, that it would be unreasonable to require his attendance.

Attendance at Court of parent of child or young person charged with an offence, etc.

(2) When the child or young person is arrested, the officer in charge of the police-station to which he is brought shall forthwith inform the parent or guardian, if he can be found, of such arrest, and shall also cause him to be warned to attend at the Court before which the child or young person will appear.

(3) The parent or guardian, whose attendance is required under this section, shall be the parent or guardian having the actual possession and control of the child or young person :

Provided that if the parent or guardian is a person other than the father, the attendance of the father or, if the father is dead or cannot be found, the attendance of the nearest adult male relative may also be required.

(4) The attendance of the parent of a child or young person shall not be required under this section in any case where the child or young person was, before the institution of the proceedings, removed from the custody or charge of his parent by an order of a Court.

(5) Nothing in this section shall be deemed to require the attendance of the mother or the female guardian of a child or young person, if such mother or female guardian does not, according to the customs and manners of the country, appear in public, but any such person may appear before the Court by a pleader or agent.

[Ben. Act II

(Chapter III.—Youthful Offenders.—Sections 21, 22.)

Restric-
tions on
punish-
ment of
children
and young
persons.

21. Notwithstanding anything to the contrary contained in any law, no child or young person shall be sentenced to death, transportation or imprisonment or committed to prison in default of payment of a fine or in default of furnishing security :

Provided that a young person may be sentenced to imprisonment or committed to prison as aforesaid when the Court certifies that he is of so unruly or so depraved a character that he is not a fit person to be sent to a reformatory school and that none of the other methods in which the case may legally be dealt with is suitable.

MODE OF SENDING YOUTHFUL OFFENDERS TO REFORMATORY OR
INDUSTRIAL SCHOOLS.

Commit-
ment of
offenders
between
twelve and
sixteen
years of
age to re-
formatory
or indus-
trial
schools.

22. (1) When a youthful offender, who in the opinion of the Court before which he is charged is twelve years of age or upwards, is convicted of an offence punishable with transportation or imprisonment, the Court may, in addition to or in lieu of sentencing him according to law to any other punishment, order that he be sent to a reformatory school :

Provided that when the offender is ordered to be sent to a reformatory school he shall not in addition be sentenced to imprisonment.

(2) When a youthful offender of twelve years of age or upwards has been sentenced to transportation or imprisonment, the ¹[State Government] may direct that, in lieu of undergoing or completing such sentence, he shall be sent to a reformatory school ; and thereupon the offender shall be subject to all the provisions of this Act as if he had been originally sentenced to detention in a reformatory school.

(3) When a youthful offender, who in the opinion of the Court before which he is charged is under twelve years of age, is convicted of an offence punishable with death, transportation or imprisonment, the Court may order that he be sent to an industrial school.

(4) When a youthful offender of the age of twelve or thirteen years, who has not previously been convicted, is convicted of an offence punishable with transportation or imprisonment, and the Court is satisfied that the youthful offender should be sent to an industrial school, but, having regard to the special circumstances of the case, should not be sent to a reformatory school, and is also satisfied that the character and antecedents of the youthful offender are such that he will not exercise an evil influence over the other inmates of an industrial school, the Court may order the youthful offender to be sent to an industrial school after previously ascertaining that the managers are willing to receive him:

Provided that the ¹[State Government] may, on the application of the managers of the industrial school, by order, transfer the youthful offender to a reformatory school.

¹ See foot-note 3 on page 61, *ante*.

of 1922.]

(Chapter III.—Youthful Offenders.—Sections 23—25.)

Act V of
1898.

(5) When a young person has been ordered by a Court to give security under section 106 or section 118 of the Code of Criminal Procedure, 1898, and has failed to do so, the Court which made the order may order such young person to be sent to a reformatory school.

23. Every order, in pursuance of which a youthful offender or child is sent to a reformatory or industrial school, shall specify the time for which the youthful offender or child is to be detained in the school, being—

Period of
detention.

- (a) in the case of a youthful offender sent to a reformatory school, not less than two and not more than five years, but not in any case extending beyond the time when the youthful offender will, in the opinion of the Court, attain the age of eighteen years ; and
- (b) in the case of a child sent to an industrial school, such time as to the Court may seem proper for the teaching and training of the child, but not in any case extending beyond the time when the child will in the opinion of the Court, attain the age of sixteen years.

OTHER WAYS OF DEALING WITH YOUTHFUL OFFENDERS.

24. A Court may, if it shall think fit, instead of directing any youthful offender to be detained in a reformatory or industrial school, order him to be— ,

Power to
discharge
youthful
offender or
to commit
him to
suitable
custody.

- (a) discharged after due admonition, or
- (b) committed to the custody of his parent or guardian or any adult relative, or failing any such person, or if any such person is found unfit by the Court, then to the custody of any trustworthy and respectable person, on such parent, guardian, relative or person executing a bond, with or without sureties, as the Court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding twelve months,

and the Court may, in addition to such order, make an order that the youthful offender be placed under the supervision of a person to be named by the Court.

25. (1) When a child or young person is convicted of an offence punishable with fine and the Court is of opinion that the case would be best met by the imposition of a fine, whether with or without any other punishment, the Court may, in any case, and shall, if the offender is a child order that the fine be paid by the parent or guardian of the child or young person, unless the Court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child or young person.

Power to
order
parent to
pay fine,
etc.

[Ben. Act II

(Chapter III.—Youthful Offenders.—Chapter IV.—Mode of sending neglected children to industrial schools.—Sections 26, 27.)

(2) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(3) Any order directing that a parent or guardian shall pay a fine under this section may be enforced as though it were an order passed under the Code of Criminal Procedure, 1898.

Act V of
1898.

(4) A parent or guardian may appeal against any such order as if it had been an order passed in proceedings against himself.

Detention
in the case
of certain
crimes
committed
by
children.

26. (1) When a child is convicted of an offence of so serious a nature that the Court is of opinion that no punishment which under the provisions of this Act it is authorized to inflict is sufficient, the Court shall order the offender to be kept in safe custody in such place or manner as it thinks fit, and shall report the case for the orders of the ¹[State Government].

(2) Notwithstanding the provisions of section 21, the ¹[State Government] may order any such child to be detained in such place and on such conditions as ²[it thinks] fit, and whilst so detained the child shall be deemed to be in legal custody :

Provided that no period of detention so ordered shall exceed the maximum period of imprisonment to which the child could have been sentenced for the offence committed :

Provided also that at any time during the period of such detention the ¹[State Government] may, if ²[it thinks] fit, direct that in lieu of such detention the youthful offender be kept in a reformatory school until he has attained the age of eighteen.

CHAPTER IV.

MODE OF SENDING NEGLECTED CHILDREN TO INDUSTRIAL SCHOOLS.

Children
liable to
be sent to
industrial
schools.

27. (1) In any area to which the ¹[State Government] may, by notification in the ²[Official Gazette], direct that this section or any portion of it shall apply, a Court having jurisdiction under this Act—

- (i) upon receiving a petition in this behalf, or
- (ii) upon a police report, or
- (iii) upon its own knowledge or suspicion,

may, either by a summons to the parent or guardian of a child apparently under the age of fourteen years or by a warrant to be executed by a police-officer not below the rank of sub-inspector or

¹ See foot-note 3 on page 61, ante.

² See foot-note 2 on page 64, ante.

³ See foot-note 4 on page 61, ante.

of 1922.]

(Chapter IV.—Mode of sending neglected children to industrial schools.—Section 27.)

by some other person authorized by the ¹[State Government] in this behalf, order the production of such child on such a day as may be specified in the summons or warrant if the Court has reason to believe that the child—

- (a) lives by begging ; or
- (b) is destitute, not being an orphan and having both parents or his surviving parent, or in the case of an illegitimate child his mother, undergoing transportation or imprisonment ; or
- (c) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child ; or
- (d) is under the care of a parent or guardian who habitually neglects or cruelly ill-treats the child ; or
- (e) frequents the company of any reputed thief or prostitute ; or
- (f) is living in circumstances calculated to cause, encourage or favour the seduction or prostitution of the child.

(2) In any such area, any person authorized by the ¹[State Government] in this behalf may bring before a Juvenile Court or Court of a Magistrate having jurisdiction under this Act any child apparently under the age of fourteen years who—

- (a) is found in any street or place of public resort begging or receiving alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise), or being in any such street or place for the purpose of so begging or receiving alms ; or
- (b) is found wandering and not having any home or settled place of abode, or visible means of subsistence, or is found wandering and having no parent or guardian, or a parent or guardian who does not exercise proper guardianship ; or
- (c) is found destitute, not being an orphan and having both parents or his surviving parent, or in the case of an illegitimate child his mother, undergoing transportation or imprisonment ; or
- (d) frequents the company of any reputed thief or prostitute ; or
- (e) lives in houses of ill-fame ; or
- (f) is subject to cruel treatment ;

and the Court before which a child is brought as coming within one of those descriptions shall examine the information and record the substance of such examination, and shall, if it thinks that there are sufficient grounds for inquiring further, fix a date for such inquiry.

¹See foot-note 3 on page 61, ante.

(Chapter IV.—Mode of sending neglected children to industrial schools.—Section 28.)

(3) On the date fixed for the production of the child under sub-section (1) or for the inquiry under sub-section (2), or on any subsequent date to which the proceedings may be adjourned, the Court shall hear and record all evidence which may be adduced and consider any cause which may be shown why an order sending the child to an industrial school should not be passed and make any further inquiry it thinks fit.

(4) If, after inquiry, the Court is satisfied that it is expedient to send the child to an industrial school, it shall pass an order to that effect.

(5) If, after inquiry the Court is satisfied that the child has been living by begging at the instance or for the profit of any person who is a professional keeper of begging children, then the Court may direct such person to appear before it and, after hearing him in his defence, may, in its discretion, direct him to pay towards the cost of the proceedings any amount not exceeding twenty-five rupees, and such cost shall be realizable under the provisions of the Code of Criminal Procedure, 1898, as if it were a fine.

Act V of
1898.

Power to
commit
child or
young
person to
suitable
custody.

28. (1) When under this Act a Court is empowered to order a child to be sent to an industrial school, the Court, in lieu of ordering him to be so sent, may make an order for the committal of the child to suitable custody in the prescribed manner, until he attains the age of sixteen years, or for any shorter period.

(2) Any person authorized by the ¹[State Government] in this behalf may bring before a Juvenile Court or Court of a Magistrate having authority to exercise powers under this Act and having jurisdiction in the case any young person apparently of the age of fourteen or fifteen years so circumstanced, that if he were a child, he would come within one or other of the descriptions mentioned in section 27, and the Court, if satisfied, after inquiry in the manner prescribed by section 27, sub-sections (2) and (3), that it is expedient so to deal with him, may make an order for his committal to suitable custody in the prescribed manner, until he attains the age of sixteen years, or for any shorter period.

(3) The Court which makes an order committing a child or young person to suitable custody under this section may, in addition, order that the child or young person be placed under the supervision of a person to be named by the Court.

²(4) Notwithstanding anything contained elsewhere in this Act, no order shall be passed sending a child to an industrial school, unless the Court is satisfied that accommodation suitable for such child is available.

¹See foot-note 3 on page, 61, *ante*.

²Sub-section (4) was added by sec. 3 of the Bengal Children (Amendment) Act, 1923 (Ben. Act V of 1923).

of 1922.]

(Chapter IV.—Mode of sending neglected children to industrial schools.—Chapter V.—Maintenance and treatment of persons in reformatory or industrial schools or under custody.—Sections 29—31.)

29. The ¹[State Government], at the request of the Court or on the application of a parent or relative of the child, may make an order directing the restitution on such conditions as may be specified in the order of any child, who having been dealt with by a Court under section 27, sub-section (4), has either been sent to an industrial school or committed under section 28, to such parent or relative of the child as the ¹[State Government] may select; and the order passed by the Court in respect of such child shall thereupon be deemed to be modified accordingly.

Power to State Government to restore child to parent or relative.

30. If it appears to a Court, on the complaint of any person, that a girl under the age of sixteen years is being treated with cruelty by her parent or guardian or that such girl, with the knowledge of her parent or guardian, is exposed to the risk of seduction or prostitution or living a life of prostitution, the Court may direct the parent or guardian to enter into a recognizance to exercise due care and supervision in respect of such girl.

Care of girls.

CHAPTER V.

MAINTENANCE AND TREATMENT OF PERSONS IN REFORMATORY OR INDUSTRIAL SCHOOLS OR UNDER CUSTODY.

31. (1) The Court which makes an order for the detention of a youthful offender or child in a reformatory or industrial school, or for the committal of a child or young person to suitable custody under this Act, may order the parent^{*} or other person liable to maintain the youthful offender, young person or child to contribute to his maintenance, if able to do so, in the prescribed manner.

Contribution of parent.

(2) the Court, before making an order under sub-section (1), shall inquire into the circumstances of the parent or other person liable to maintain the youthful offender, young person or child, and shall record the evidence, if any, in the presence of the parent or such other person, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader.

(3) The persons liable to maintain a youthful offender, young person or child shall, for the purposes of sub-section (1), include, in the case of illegitimacy, his putative father against whom an order under section 488 of the Code of Criminal Procedure, 1898, has already been passed, or who has been otherwise declared to be the putative father by any competent Court or authority:

Act V of 1898.

Provided that where the youthful offender, young person or child is illegitimate and an order for his maintenance has been made under section 488 of the Code of Criminal Procedure, 1898, the Court shall not ordinarily make an order for contribution against the putative father, but may order the whole or any part of the sums accruing due under the said order for maintenance to be paid to such person as may be named by the Court, and such sums shall be applied by him towards the maintenance of the youthful offender, young person or child.

¹ See foot-note 8 on page 61, ante.

(Chapter V.—Maintenance and treatment of persons in reformatory or industrial schools or under custody.—Sections 32—34.)

(4) Any order under this section may be enforced in the same manner as an order under section 488 of the Code of Criminal Procedure, 1898.

Act V of
1896.

Boarding
out of
children.

32. The managers of an industrial school to which a child under the age of eight years is sent may, with the consent in writing of the chief inspector, board the child out with any suitable person until the child reaches the age of ten years, and thereafter for such longer period, with the consent in writing of the chief inspector, as the managers consider to be advisable in the interests of the child, subject to the exercise by the managers of such powers as to supervision, recall, and otherwise as may be prescribed; and, when a child is so boarded out, he shall, nevertheless, be deemed, for the purposes of this Act, to be a child detained in the school, and the provisions of this Act shall apply accordingly, so far as possible.

Placing
out on
license.

33. (1) When a youthful offender or child is detained in a reformatory or industrial school, the managers of the school may at any time, with the consent in writing, of the chief inspector, by license, permit the youthful offender or child, on such conditions as may be prescribed, to live with any trustworthy and respectable person named in the license willing to receive and take charge of him with a view to train him for some useful trade or calling.

(2) Any license so granted shall be in force until revoked or forfeited by the breach of any of the conditions on which it was granted.

(3) The managers of the school may, at any time by order in writing, revoke any such license, and order the youthful offender or child to return to the school, and shall do so at the desire of the person to whom the youthful offender or child is licensed.

(4) If the youthful offender or child refuses or fails to return to the school, the managers of the school may, if necessary, arrest him, or cause him to be arrested, and may take him, or cause him to be taken, back to the school.

(5) The time during which a youthful offender or child is absent from a reformatory or industrial school in pursuance of a license under this section shall be deemed to be part of the time of his detention in the school:

Provided that, when a youthful offender or child has failed to return to the school on the license being revoked or forfeited, the time which elapses after his failure so to return shall be excluded in computing the time during which he is to be detained in the school.

Power to
order
parent to
produce a
youthful
offender or
child who
refuses to
return to a
school.

34. (1) When a license has been revoked or forfeited and the youthful offender or child refuses or fails to return to the school a Court, if satisfied by information on oath that there is reasonable ground for believing that his parent or guardian could produce the youthful offender or child, may issue a summons requiring the parent or guardian to attend at the Court on such a day as may be specified in the summons, and to

of 1922.]

(Chapter V.—Maintenance and treatment of persons in reformatory or industrial schools or under custody.—Sections 35, 36.)

produce the child, and, if he fails to do so without reasonable excuse, he shall, in addition to any other liability to which he may be subject under the provisions of this Act or any other law, be liable to a fine not exceeding twenty-five rupees.

(2) Any order directing that a parent or guardian shall pay a fine under this section may be enforced as though it were an order passed under the Code of Criminal Procedure, 1898.

Act V of
1898.

35. Whoever—

- (a) knowingly assists or induces, directly or indirectly, a youthful offender or child detained in or placed out on license from a reformatory or industrial school to escape from the school or from any person with whom he is placed out on license; or any child or young person to escape from the person to whose custody he is committed under this Act; or
- (b) knowingly harbours, conceals, or prevents from returning to school, or to any person with whom he is placed out on license, or to the person to whose custody he is committed under this Act, a youthful offender, young person or child who has so escaped, or knowingly assists in so doing;

Penalty for abetting escape of youthful offender or child.

shall be liable to imprisonment for a term which may extend to two months or to a fine not exceeding two hundred rupees, or to both.

36. (1) The ¹[State Government] may, at any time, order a youthful offender or a child to be discharged from a reformatory or industrial school either absolutely or on such conditions as the ²[State Government] ³[approves].

Discharge and transfer.

(2) The ¹[State Government] may order—

- (a) a youthful offender or child to be transferred from one reformatory school to another, or from one industrial school to another;
- (b) a youthful offender under the age of fourteen years detained in a reformatory school to be transferred to an industrial school;
- (c) a young person detained in an industrial school, who is found to be exercising an evil influence over the other inmates of the school or who is guilty of a serious breach of the rules of the school or of escaping from the school, to be transferred to a reformatory school:

Provided that the whole period of the detention of the youthful offender, young person or child shall not be increased by the transfer.

¹See foot-note 8 on page 61, ante.

²This word was substituted for the word "approve" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter VI.—Miscellaneous.—Sections 37—38.)

CHAPTER VI.

MISCELLANEOUS.

Juvenile
Courts.Act V of
1898.

37. (1) ¹[Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the State Government may, by notification in the *Official Gazette*, provide for the establishment for any district or any other area specified in the notification] of one or more separate Courts for the hearing of charges against children or young persons or of applications for orders of licenses relating to a child or young person at which the attendance of the child or young person is required.

(2) Where no such separate Court has been established, the Court before which a child or young person is brought shall, unless the child or young person is charged jointly with any other person not being a child or young person, whenever practicable, sit either in a different building or room from that in which the ordinary sittings of the Court held or on different days or at different times from those at which the ordinary sittings are held.

* * * * *

Detention
of child or
young
person
pending
trial or on
conviction.

²37A. Any child or young person charged with an offence may, pending trial or on conviction, be detained in the prescribed manner in a place, whether in Calcutta or elsewhere, to be set apart by the ⁴[State Government] for the detention of children or young persons.

Presump-
tion and
determina-
tion of age.

38. (1) Whenever a person, whether charged with an offence or not, is brought before any criminal Court otherwise than for the purpose of giving evidence, and it appears to the Court that he is a child or young person, the Court shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, and shall record a finding thereon, stating his age as nearly as may be.

(2) An order or judgment of the Court shall not be invalidated by any subsequent proof that the age of such person has not been correctly stated by the Court, and the age presumed or declared by the Court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person and, where it appears to the Court that the person so brought before it is of the age of sixteen years or

¹The words and figures "Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the Provincial Government may, by notification in the *Calcutta Gazette*, provide for the establishment for any district or any other area specified in the notification" were originally substituted for the words, brackets and figures "The Local Government may provide for the establishment for any district or local area" by sec. 4 (1) of the Bengal Children (Amendment) Act, 1929 (Ben. Act III of 1929), and thereafter the words "*Official Gazette*" were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India Adaptation of Indian Laws Order, 1957, and the word, "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation Laws Order, 1950.

²Sub-section (3) was repealed by sec. 4(2) of the Bengal Children (Amendment) Act, 1929 (Ben. Act III of 1929).

³Section 37A was inserted by sec. 5, *ibid.*

⁴See foot-note 3 on page 61, *ante*.

of 1922.]

(Chapter VI.—Miscellaneous.—Sections 39—42.)

upwards, the person shall for the purposes of this Act, be deemed not to be a child or young person.

39. (1) In determining the reformatory or industrial school to which a youthful offender or child is to be sent under this Act, the Court shall endeavour to ascertain the religious persuasion to which the youthful offender or child belongs and shall, if possible, select a school in which facilities are afforded for instruction in his religion, and shall pass an order to that effect.

Provision
as to
religious
persua-
sion.

(2) Where a child or young person is committed to suitable custody under this Act, the Court in determining the person to whose custody the child or young person shall be committed shall endeavour in like manner to ascertain the religion of the child or young person and shall, if possible, select a person of the same religion, or a person who gives such undertaking as seems to the Court sufficient that the child or young person shall be brought up in accordance with the religion of such child or young person, and shall pass an order to that effect.

(3) Where under section 32 or section 33 a child or a youthful offender is boarded out or is permitted by license to live with any other person, the manager of the school shall select for this purpose a person of the same religion as the child or youthful offender or a person who gives a satisfactory undertaking that the child or the youthful offender shall be brought up in accordance with the religion of such child or youthful offender.

40. If any person over the age of sixteen years, who has the custody, charge or care of any child or young person, assaults, ill-treats, neglects, abandons or exposes such child or young person, or causes such child or young person to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child or young person unnecessary suffering or injury to his health (including injury to or loss of sight or hearing or limb or organ of the body, and any mental derangement), that person shall be punishable with imprisonment for a term not exceeding two years or with fine not exceeding two hundred rupees, or with both.

Penalty for
cruelty to
child or
young
person.

¹41. If any person having the custody, charge or care of a girl under the age of sixteen years causes or encourages or abets the seduction or prostitution of that girl, he shall be punishable with imprisonment for a term not exceeding two years.

Penalty for
encourag-
ing or
abetting
seduction
or prosti-
tution of
young girl.

42. If a pawn-broker takes an article in pawn from any child, whether offered by that child on his own behalf or on behalf of any other person, he shall be punishable with fine not exceeding one hundred rupees.

Penalty
for taking
pawn from
a child.

(Chapter VI.—Miscellaneous.—Sections 43—47.)

Authority
of persons
having
custody of
child or
young
person.

43. Notwithstanding anything contained in any other law, any person to whose custody a child or young person is committed under the provisions of this Act shall, while the order is in force, have the like control over the child or young person as if he were his parent, and shall be responsible for his maintenance and protection, and the child or young person shall continue in his custody notwithstanding that he is claimed by his parent or any other person.

Custody of
youthful
offenders,
young
persons
and
children in
places of
detention.

44. (1) A copy of the order or judgment, in pursuance of which a youthful offender, young person or child is committed to custody in a place of detention provided under this Act, shall be delivered with him to the person in charge of the place of detention, and shall be a sufficient authority for his detention in that place in accordance with the terms thereof.

(2) Any such person shall during such detention and whilst being conveyed to and from the place of detention be deemed to be in legal custody, and, if he escapes, may be arrested without a warrant and be brought back to the place of detention where he was detained.

Inspection
of institu-
tions for
poor
children.

45. (1) The ¹[State Government] may cause any institution for the reception of poor children or young persons supported wholly or partly by voluntary contributions, and not liable to be inspected by or under the authority of ¹[any Government], to be visited and inspected from time to time by persons appointed by the ¹[State Government] for the purpose.

(2) Any person so appointed shall have power to enter the institution and to make a complete inspection thereof and of all papers, registers, and accounts relating thereto.

(3) Whoever obstructs any person appointed under subsection (1) in the discharge of his duties, or refuses or wilfully neglects to furnish him with the necessary means of making any entry or inspection, shall be punishable with fine which may extend to fifty rupees.

Procedure
in respect
of bonds.

46. The provisions of Chapter XLII of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to bonds taken under this Act.

Act V of
1898.

Removal of
disquali-
fication
attaching
to convic-
tions of
offences.

47. Notwithstanding anything contained in any other law, the conviction of a child or young person shall not be regarded as a disqualification attaching to a conviction of an offence under such law.

¹See foot-note 3 on page 61, ante.

²These words were substituted for the words "the Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1922.]

(Chapter VI.—Miscellaneous.—Section 48.)

48. (1) The ¹[State Government] may make rules for carrying out the purposes of this Act. Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[State Government] may make rules—

- (a) for the establishment, certification and maintenance of reformatory and industrial schools and auxiliary homes ;
- (b) for the inspection of reformatory and industrial schools and auxiliary homes and prescribing the powers and duties of the chief inspector, and other inspectors ;
- (c) prescribing the powers and duties of the managers of reformatory and industrial schools ;
- (d) regulating the choice of a school ;
- (e) for the boarding out, licensing and supervision of children and young persons ;
- (f) for the contribution by parents and other persons liable to maintain children and young persons ;
- (g) regulating the disposal and after-care of the inmates of reformatory and industrial schools and for the appointment of visitors and their tenure of office ;
- (h) for the management of reformatory and industrial schools and auxiliary homes ;
- (i) for the education and industrial and moral training of the inmates of reformatory and industrial schools and for the credit to them of a portion of the proceeds of their work ;
- (j) for the conveyance of youthful offenders and children to reformatory and industrial schools ;
- (k) prescribing visits to and communication with the inmates of reformatory and industrial schools ;
- (l) for the grant of permission to the inmates of reformatory and industrial schools to absent themselves for short periods ;
- (m) prescribing the punishment of offences committed by the inmates of reformatory and industrial schools ;
- (n) prescribing the manner in which a child or young person may be committed to suitable custody and for the supervision of such children and young persons ;
- (o) for the detention of children and young persons under arrest or remanded or committed for trial ²[or on conviction] ; and,
- (p) prescribing the procedure to be adopted in Juvenile Courts.

¹See foot-note 3 on page 61, *ante*.

²These words were inserted by sec. 6 of the Bengal Children (Amendment) Act, 1929 (Ben. Act III of 1929).

[Ben. Act II of 1922.]

(Chapter VI.—Miscellaneous.—Sections 49, 50.)

1*

(4) All rules made under this section shall be published in the ³[Official Gazette] and, on such publication, shall have the same effect as if enacted in this Act.

Appeal.

49. (1) ³[Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an appeal from an order made by a Court under the provisions of this Act shall lie :]

Act V of 1898.

(a) if passed by a Magistrate other than a District Magistrate or a Presidency Magistrate, to the District Magistrate ;

(b) if passed by a District Magistrate, to the Court of Sessions ;

(c) if passed by a Court of Session or Court of an Additional Sessions Judge or of an Assistant Sessions Judge or by a Presidency Magistrate, to the High Court.

⁴[1a] Notwithstanding anything contained in the said Code, or in sub-section (1), an appeal from an order made by a separate Court established under section 37, sub-section (1), shall lie to the District Magistrate within the local limits of whose jurisdiction such Juvenile Court is held or to the Chief Presidency Magistrate when such Court is held within the local limits of his jurisdiction.

(2) No appeal shall lie from any order passed in any such appeal.

Revision.

50. Any order passed under the provisions of this Act and not otherwise provided for may be revised by the High Court either on the report of a Sessions Judge or of a District Magistrate ⁵[or of the Chief Presidency Magistrate], or on the application of a party interested, or on its own initiative.

³Sub-section (3) was omitted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 4 on page 61, *ante*.

⁴These words and figures were substituted for the words, brackets and figures "An appeal from an order made by a Court under sections 25, 27, 31 or 39 shall lie," by sec 7(1) of the Bengal Children (Amendment) Act, 1929 (Ben. Act III of 1929).

⁵Sub-section (1a) was inserted by sec. 7(2), *ibid*.

⁶These words were inserted by sec. 8, *ibid*.

Bengal Act IV of 1922

[THE BENGAL COURT-FEES (AMENDMENT) ACT, 1922]¹

REPEALED IN PART

... Ben. Act XVI of 1946.

ADAPTED

{ The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.

(29th March, 1922.)

An Act to amend the Court-fees Act, 1870, and the Presidency Small Cause Courts Act, 1822, with reference to the scale of court-fees in Bengal.

VII of
1870.
XV of
1882.

WHEREAS it is necessary to revise the scale of court-fees for Bengal, by amendment of the Court-fees Act, 1870, and the Presidency Small Cause Courts Act, 1882, in their application to Bengal, in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Court-fees (Amendment) Act, 1922.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on the first day of April, 1922.

2. The Court-fees Act, 1870, as amended by subsequent legislation, and the Presidency Small Cause Courts Act, 1882, as amended by subsequent legislation, shall be amended, in their application to ²[West Bengal] in the manner hereinafter provided.

Application
of Act.

3. to 15. [Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946.)]

16. In section 71 of the Presidency Small Cause Courts Act, 1882,—

Amend-
ment of
section 71
of Act XV
of 1882.

(1) in clause (a) for the words “five hundred rupees” the words “fifty rupees” shall be substituted ;

(2) after clause (a) the following shall be inserted, namely :—

“(b) when the amount or value of the subject-matter exceeds fifty rupees, but does not exceed five hundred rupees—the sum of six rupees four annas and three annas in the rupee on the excess of such amount or value over fifty rupees ;”

(3) clause (b) shall be renumbered as clause (c) and in that clause as renumbered for the words “sixty-two rupees eight annas” the words “ninety rupees ten annas” shall be substituted ; and after the words “one anna” the words “six pias” shall be inserted.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1921, Pt. IV, page 518 ; and for Proceedings in Council, see the Bengal Legislative Council Proceedings, 1922, Vol. VII, No. 1, pages 286—339, and Vol. VII, No. 4, 1922, pages 151—245.

²The words “West Bengal” were substituted for the word “Bengal” by paragraph (2) of Article 8 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

[Ben. Act IV of 1922.]

(Section 17 and the Schedule.)

tion
certain
probates,
letters of
adminis-
tration and
certificates.

17. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued.

THE SCHEDULE.

Table of rates of *ad valorem* fees leviable on the institution of suits.

[Not printed here. Incorporated in Act VII of 1870.]

Bengal Act V of 1922

(The Bengal Amusements Tax Act, 1922.)

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Bengal Act V of 1922

[THE BENGAL AMUSEMENTS TAX, 1922]¹

AMENDED	<div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle;"> Ben. Act XIII of 1935. Ben. Act V of 1943. Ben. Act IX of 1945. West Ben. Act X of 1948. West Ben. Act XI of 1949. West Ben. Act XII of 1949. </div> </div>
REPEALED IN PART AND AMENDED	...	...	<div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle;"> West Ben. Act IV of 1951. West Ben. Act XXVIII of 1961. </div> </div>
ADAPTED	...	...	<div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;">(a)</div> <div style="display: inline-block; vertical-align: middle;"> The Government of India (Adaptation of Indian Laws) Order, 1937. </div> </div> <div style="display: inline-block; vertical-align: middle;">(b)</div> <div style="display: inline-block; vertical-align: middle;"> The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. </div> <div style="display: inline-block; vertical-align: middle;">(c)</div> <div style="display: inline-block; vertical-align: middle;"> The Adaptation of Laws Order, 1950. </div> </div>

(29th March, 1922.)

An Act to make an addition to the public revenue of Bengal and for that purpose to impose a tax on entertainments and other amusements and on certain forms of betting.

WHEREAS it is necessary to make an addition to the public revenue of Bengal and for that purpose to impose a tax on entertainments and other amusements and on certain forms of betting ;

Preamble.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Amusements Tax Act, 1922.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on the first day of April, 1922, in—

Short title, extent and commencement.

Ben. Act
III of 1899.

(a) Calcutta, as defined in clause (7) of section 3 of the Calcutta Municipal Act, 1899³ ;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1922, Pt. IV, page 10 ; and for Proceedings in Council, see the Bengal Legislative Council Proceedings, 1922, Vol. VII, No. 1, pages 163-172 and 188-238, and 244-286 ; and Vol. VII, No. 4, pages 264-319.

²The words "West Bengal" were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³Bengal Act III of 1899 was repealed and re-enacted by the Calcutta Municipal Act, 1928 (Ben. Act III of 1928), which Act was again repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951), and this reference should now be construed as a reference to clause (11) of section 5 of the last mentioned Act.

{Ben. Act V

(Chapter I.—Entertainments Tax.—Section 2.)

- (b) (i) Fort William, excepting the portion thereof included within the ramparts of the Fort,
 (ii) the Esplanade, and
 (iii) that part of Hastings north of the south edge of Clyde Row and Strand Road to the river bank ; and
 (c) the Municipalities of Howrah, Cossipore-Chitpur, Manik-tola, Garden Reach, Tollygunge, ^{1*} and Darjeeling, the Barrackpore Cantonment and the South Suburban Municipality.
- (4) The ²[State Government] may, by notification in the ³[Official Gazette], bring this Act or any portion thereof into force in such other areas in ⁴[West Bengal] at such time as shall be specified in such notification :

* * * * *

CHAPTER I.

ENTERTAINMENTS TAX.

De-
finitions.

2. In this chapter, unless there is anything repugnant in the subject or context,—

- (1) “admission” includes admission as a spectator or as one of an audience, and admission for the purpose of amusement by taking part in an entertainment ;
 (2) “admission to an entertainment” includes admission to any place in which the entertainment is held ;
 (3) “agriculture” includes horticulture and live-stock breeding ;
 (4) “entertainment” includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment ;
⁵(4a) “entertainments tax” means a tax levied under section 3 ;
 (5) “live-stock” includes animals of every description ;
 (6) “notification” means a notification published in the ⁶[Official Gazette] ;

¹The word “Dacca” was omitted by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words were substituted for the words “Calcutta Gazette”, by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴See foot-note 2 on page 85, *ante*.

⁵The proviso was omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶Clause (4a) of section 2 was inserted by section 2 of the West Bengal Amusements Tax (Amendment) Act, 1949 (West Ben. Act XI of 1949).

of 1922.]

(Chapter I.—Entertainments Tax.—Section 3.)

(7) "payment for admission" includes any payment made by a person who having been admitted to one part of a place of entertainment is subsequently admitted to another part thereof, for admission to which a payment involving a tax or a higher rate of tax is required and any payment for seats or other accommodation in a place of entertainment ;

(8) "proprietor" in relation to any entertainment includes any person responsible for the management thereof ; and

(9) "society" includes a company, institution, club or other association of persons by whatever name called.

3. (1) Except as otherwise expressly provided in this Act there shall be charged, levied, and paid to the [State Government] a tax at the rate of twenty-five *per centum* on all payments for admission to any entertainment.

Tax on payments for admission to entertainments.

(2) The entertainments tax shall not be leviable where the payment for admission is not more than [nineteen naye paise].

(3) The rate of entertainments tax in the case of payments for admission to any theatre or circus or any class of entertainment (other than cinematograph exhibition) to which the State Government may apply this sub-section, on the ground that the rate specified in sub-section (1) would impose an undue burden on the industry involved, shall be as follows, namely :—

Where the payment excluding the amount of the tax—

- (i) is more than nineteen naye paise five naye paise, but is not more than twenty-five naye paise
- (ii) is more than twenty-five naye ten naye paise, paise but is less than seventy-five naye paise
- (iii) is seventy-five naye paise or more fifteen naye paise but is less than one rupee fifty paise, naye paise

¹The words and figures "as from the first day of April, 1922" were omitted by sec. 2(1) of the Bengal Amusements Tax (Amendment) Act, 1935 (Ben. Act XIII of 1935).

²The words "Provincial Government" were originally substituted for the words "Government of Bengal" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³The words "hereinafter referred to as the entertainments tax" were omitted by sec. 3(1) of the West Bengal Amusements Tax (Amendment) Act, 1949 (West Ben. Act XI of 1949).

⁴These words were substituted for the former words "three annas" by sec. 2(1) of the Bengal Amusements Tax (Amendment) Act, 1961 (West Ben. Act XXVIII of 1961).

⁵Substituted for the former sub-section (3) by sec. 2(3), *ibid.*

[Ben. Act V

(Chapter I.—Entertainments Tax.—Section 3.)

- (iv) is one rupee fifty naye paise or more but is less than two rupees fifty naye paise twenty-five naye paise,
- (v) is two rupees fifty naye paise or more but is less than three rupees fifty naye paise fifty naye paise,
- (vi) is three rupees fifty naye paise or more but is less than four rupees fifty naye paise seventy-five naye paise,
- (vii) is four rupees fifty naye paise or more but is less than six rupees fifty naye paise one rupee,
- (viii) is six rupees fifty naye paise or more but is less than nine rupees fifty naye paise one rupee fifty naye paise,
- (ix) is nine rupees fifty naye paise or more but is not more than ten rupees two rupees,
- (x) is more than ten rupees, for the first ten rupees and for every ten rupees or part of ten rupees over ten rupees two rupees.

¹(3a) The rate of entertainments tax in the case of payments for admission to any cinematograph exhibition shall be as follows, namely :—

Where the payment excluding the amount of the tax—

- (i) is twenty naye paise or more but is not more than fifty naye paise twenty-five *per centum* of such payment rounded off, if it is not a multiple of five naye paise, to the next higher multiple of five naye paise,
- (ii) is more than fifty naye paise but is not more than one rupee forty *per centum* of such payment rounded off, if it is not a multiple of five naye paise, to the next higher multiple of five naye paise,
- (iii) is more than one rupee but is not more than three rupees seventy-five *per centum* of such payment rounded off, if it is not a multiple of five naye paise, to the next higher multiple of five naye paise,
- (iv) is more than three rupees one hundred *per centum* of such payment rounded off, if it is not a multiple of five naye paise, to the next higher multiple of naye paise.

¹Sub-section (3a) was substituted for the former sub-section, as inserted by sec. 8(3) of the West Bengal Amusements Tax (Amendment) Act, 1949 (West Ben. Act XI of 1949), by sec. 2(3) of the Bengal Amusements Tax (Amendment) Act, 1961 (West Ben. Act XXVIII of 1961).

of 1922.]

(Chapter I.—Entertainments Tax.—Section 4.)

¹(3b) Eetertainments tax shall be charged, levied and paid on all free or complimentary passes or tickets by whatever name called, issued by the proprietor of a cinematograph exhibition in respect of admissions without payment to a seat or other accommodation therein and every person who is so admitted on a free or complimentary pass or ticket in a cinematograph exhibition shall be liable to pay the same amount of entertainments tax as would be payable by him had he been admitted to such seat or other accommodation on payment.

(4) The ²[State Government] may, on the application of a proprietor of any entertainment in respect of which the entertainments tax is payable under sub-section (1), allow the proprietor on such conditions as ³[it] may prescribe to pay the amount of the tax due by means of a consolidated payment of a twenty *per centum* of the gross sum received by the proprietor on account of payments for admission to the entertainment and on account of the tax.

4 *

4. No person ⁵[liable to pay an entertainments tax] shall be admitted ⁶* * to any entertainment, ⁷* * * *, except—

Admission
to enter-
tainments.

(a) with a ticket stamped with an impressed, embossed, engraved or adhesive stamp (not before used) issued by the ²[State Government] for the purpose of revenue and denoting that the proper entertainments tax has been paid,

(b) in special cases with the approval of the ²[State Government], through a barrier which, or by means of a mechanical contrivance which, automatically registers the number of persons admitted,

¹Sub-section 3(b) was inserted by sec. 3(3) of the West Bengal Amusements Tax (Amendment) Act, 1949 (West Ben. Act XI of 1949).

²See foot-note 2 on page 86, *ante*.

³This word was substituted for the word "they" by paragraph 5 (2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Sub-section (5) was omitted by sec. 2(4) of the Bengal Amusements Tax (Amendment) Act, 1935 (Ben. Act XIII of 1935).

⁵These words were inserted by sec. 4(1) of the West Bengal Amusements Tax (Amendment) Act 1949 (West Ben. Act XI of 1949).

⁶The words "for payment," were omitted by sec. 4(2), *ibid*.

⁷The words "where the payment is subject to the entertainments tax" were omitted by sec. 4(2), *ibid*.

(Chapter I.—Entertainments Tax.—Sections 5—7.)

unless the proprietor of the entertainment has made arrangements approved by the ¹[State Government] for furnishing returns of the payments for admission to the entertainment ²[and in the case of cinematograph exhibition, also returns of admissions to seats or other accommodations without payment on free or complimentary passes or tickets] and has given security up to an amount and in a manner approved by the ¹[State Government] for the payment of the entertainments tax.

Penalty
for non-
payment
of tax.

5. If any person ³[liable to pay entertainments tax] is admitted ⁴* * * * * to any place of entertainment and the provisions of section 4 are not complied with the proprietor of the entertainment to which such person is admitted shall, on conviction before a Magistrate, be liable in respect of each such offence to a fine not exceeding five hundred rupees, and shall in addition be liable to pay any tax which should have been paid.

Sections 4
and 5
not to
apply in
certain

6. The provisions of sections 4 and 5 shall not apply to any entertainment in respect of which a consolidated payment is made under section 3, sub-section (4).

Manner of
payment.

7. (1) The entertainments tax shall be charged in respect of each person admitted for payment, ⁵[and in the case of a cinematograph exhibition, also in respect of each person admitted without payment on a free or complimentary pass or ticket] and, in the case of admission by stamped ticket, shall be paid by means of the stamp on the ticket and, in the case of admission otherwise than by stamped ticket, shall be calculated and paid on the number of admissions.

(2) The entertainments tax, in the case of admission otherwise than by stamped ticket, shall be recoverable from the proprietor.

(3) Where the payment for admission to an entertainment is made by means of a lump sum paid as a subscription or contribution to any society, or for a season ticket or for the right of admission to a series of entertainments or to any entertainment during a certain period of time, or for any privilege, right, facility or thing combined with the right of admission to any entertainment, or involving such right of admission without further payment or at a reduced charge, the entertainments tax shall be

¹ See foot-note 2 on page 86, *ante*.

² These words were inserted by sec. 4 (3) of the West Bengal Amusement Tax (Amendment) Act, 1949 (West Ben. Act XI of 1949).

³ These words were inserted by sec. 5(1), *ibid*.

⁴ The words "for payment" were omitted by sec. 5(2), *ibid*.

⁵ These words were inserted by sec. 6, *ibid*.

of 1922.]

(Chapter I.—Entertainments Tax.—Sections 8, 9.)

paid on the amount of the lump sum, but where the ¹[State Government] ²[is] of opinion that the payment of a lump sum or any payment for a ticket represents payment for other privileges, rights or purposes besides the admission to an entertainment, or covers admission to an entertainment during any period for which the tax has not been in operation, the tax shall be charged on such an amount as appears to the ¹[State Government] to represent the right of admission to entertainments in respect of which the entertainments tax is payable.

8. (1) The entertainments tax shall not be charged on payments for admission to any entertainment where the ¹[State Government] ²[is] satisfied—

Exemptions.

(a) that the whole of the takings thereof are devoted to philanthropic, religious or charitable purposes without any charge on the takings for any expenses of the entertainment ; or

(b) that the entertainment is of a wholly educational character (any question on that point to be determined in the case of difference by the ¹[State Government] in the Department of Education) ; or

(c) that the entertainment is provided for partly educational or partly scientific purposes by a society, not conducted or established for profit ; or

(d) that the entertainment is provided by a society which is established solely for the purpose of promoting the interest of the industry of agriculture, or the manufacturing industry, or some branch thereof, or the public health, and which is not conducted for profit, and consists solely of an exhibition of the products of the industry, or branch thereof, for promoting the interests of which the society exists or of materials, machinery, appliances, or foodstuffs, used in the production of those products, or of articles which are of material interest in connection with the questions relating to the public health, as the case may be.

(2) The ¹[State Government] may, by general or special order, exempt any entertainment or class of entertainments from liability to the entertainments tax.

9. Where the ¹[State Government] ²[is] satisfied that the whole of the net proceeds of an entertainment are devoted to philanthropic, religious or charitable purposes, and that in calculating the net proceeds not more than twenty-five *per cent.* of the gross proceeds have been deducted on account of the expenses of the entertainment, ³[it] shall repay to the proprietor the amount of the entertainments tax paid in respect of the entertainment.

Refunds in certain circumstances.

¹ See foot note 2 on page 86, *ante*.

² This word was substituted for the word "are" by paragraph 5(9) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³ See foot-note 3 on page 89, *ante*.

[Ben. Act V

(Chapter I.—Entertainments Tax.—Sections 10—12.)

Recoveries.

10. (1) Any sum due on account of the entertainments tax shall be recoverable by the ¹[State Government] as a public demand.

(2) Any fine imposed under this chapter shall be recovered in the manner provided in the Code of Criminal Procedure, 1898, for the recovery of fines.

Act V
of 1898.

Inspection.

11. (1) Any officer authorised by the ¹[State Government] for the purpose may enter any place of entertainment while the entertainment is proceeding, and any place ordinarily used as a place of entertainment at any reasonable times, with a view to seeing whether the provisions of this chapter or any rules made thereunder are being complied with.

(2) If any person prevents or obstructs the entry of any officer so authorized, he shall, in addition to any other punishment to which he is liable under any law for the time being in force, be liable on conviction before a Magistrate to a fine not exceeding two hundred rupees.

(3) Every officer authorised under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV
of 1860.

Rules.

12. (1) The ¹[State Government] may make rules for securing the payment of the entertainments tax and generally for carrying into effect the provisions of this chapter, and in particular—

- (a) for the supply and use of stamps or stamped tickets, or for the stamping of tickets sent to be stamped ; and for securing the defacement of stamps when used ;
- (b) for the use of tickets covering the admission of more than one person and the calculation of the tax thereon ; and for the payment of the tax on the transfer from one part of a place of entertainment to another and on payments for seats or other accommodation ;
- (c) for controlling the use of the barriers or mechanical contrivances (including the prevention of the use of the same barrier or mechanical contrivance for payments of a different amount), and for securing proper records of admission by means of barriers or mechanical contrivances ;
- (d) for the checking of admissions, the keeping of accounts and the furnishing of returns by the proprietors of entertainments to which the provisions of section 3, sub-section (4), are applied or in respect of which the arrangements approved by the ¹[State Government] for furnishing returns are made under section 4 ;

¹See foot-note 2 on page 88, ante.

of 1922.]

(Chapter I.—Entertainments Tax.—Chapter II.—Taxes on certain forms of betting.—Sections 13, 14.)

- (e) for the renewal of damaged or spoiled stamps and for the procedure to be followed on applications for refund under this chapter or under the rules made thereunder ;
- (f) for the keeping of accounts of all stamps used under this chapter ; and
- (g) for the presentation and disposal of applications for exemption from payment of the entertainments tax, or for the refund thereof, made under the provisions of this Chapter.

(2) If any person acts in contravention of, or fails to comply with, any such rules, he shall, on conviction before a Magistrate, be liable in respect of each offence to a fine not exceeding five hundred rupees.

13. The ¹[State Government] may, by notification in the ²[Official Gazette], delegate all or any of ³[its] powers under this chapter, except those conferred upon ⁴[it] by sub-section (4) of section 1, by section 12, and by this section, to any person or to any authority subordinate to the ¹[State Government].

Power to State Government to delegate certain powers.

CHAPTER II.

TAXES ON CERTAIN FORMS OF BETTING.

14. In this chapter—

(1) “backer” includes any person with whom a licensed book-maker bets ;

(2) “bet” includes “wager” and “betting” includes wagering ;

(3) “licensed book-maker” means any person who carries on the business or vocation of or acts as a bookmaker or turf commission agent under a license or permit issued by any racing club or by the stewards thereof to enable him to carry on his business or vocation ⁵[as such book-maker or turf commission agent].

(4) “prescribed” means prescribed by this chapter or by the rules made thereunder ;

(5) “racing club” includes a club, association, society or body of persons corporate or incorporate—

(a) formed for the purpose of promoting horse-racing or pony-racing or for holding race-meetings ; or

(b) conducting or controlling such meetings ;

Definitions.

Ben. Act
IV of 1913.

¹ See foot-note 2 on page 86, *ante*.

² See foot-note 3 on page 86, *ante*.

³ This word was substituted for the word “their” by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴ This word was substituted for the word “them”, *ibid*.

⁵ These words were substituted for the words “under the provisions of the Bengal Public Gambling (Amendment) Act, 1913, as specified in the license or permit” by sec. 3(1) of the Bengal Amusements Tax (Amendment) Act, 1961 (West Ben. Act XXVIII of 1961).

[Ben. Act V

(Chapter II.—Taxes on certain forms of betting.—Sections 15—18.)

(5) "totalisator" means a totalisator, in an enclosure which the stewards controlling a race-meeting have set apart in accordance with the ¹[West Bengal Gambling and Prize Competitions Act, 1957], and includes any instrument, machine, or contrivance known as the totalisator, or any other instrument, machine or contrivance of a like nature or any scheme for enabling any number of persons to make bets with one another on the like principles.

West Ben.
Act. XXXII
of 1957.

VOLUME IV

Tax on
totalisa-
tors and
payment
thereof.

15. There s
levied and paid
into any totalis
hereinafter ref
"twelve and a
and a half per
shall be deeme
the totalisator
the race-meeti

Page 94—

In section 15, for the words "twelve and a half per cent.", in the two places where they occur, substitute the words "fifteen per cent."

(Substituted by West Ben. Act XXVI of 1965, section 2.)

[No. 2, dated the 1st May, 1970.]

Procedure
for making
over
totalisa-
tor tax to
Govern-
ment.

16. The stewards of a race-meeting shall, in such manner as may be prescribed, forward to the prescribed officer a return stating the total amount of the monies paid into the totalisator at the meeting, and shall at the prescribed time make over to the prescribed officer the amount of the tax for that meeting.

Accounts
of totali-
sator tax.

17. The stewards of a race-meeting shall keep accounts in the prescribed form of all monies paid into the totalisator at that meeting.

(2) Every person having the custody or control of any such accounts shall, when required in writing by an officer empowered in this behalf by the ⁶[State Government], permit such officer, or an officer authorised in writing by him in this behalf, to inspect and take copies.

Page 95—

Betting
tax,

18. (1) Government a licensed book enclosure set
In sub-section (1) of section 18, for the words "twelve and a half per cent.", substitute the words "fifteen per cent."

(Substituted by West Ben. Act XXVI of 1965, section 3.)

[No. 2, dated the 1st May, 1970.]

¹These words were substituted for the words and figures "Bengal Public Gambling (Amendment) Act, 1913" by sec. 3(g) of the Bengal Amusements Tax (Amendment) Act, 1961 (West Ben. Act. XXVIII of 1961).

⁶The words and figures "as from the second day of April, 1922" were omitted by section 8 of the West Bengal Finance Act, 1949 (West Ben. Act XII of 1949).

^aSee foot-note 2 on page 86, ante.

^aThese words were substituted for the words "twenty per cent." by sec. 2 of the Bengal Amusements Tax (West Bengal Amendment) Act, 1951 (West Ben. Act IV of 1951).

^aThe words "of the Provincial Government" were originally substituted for the words "of Government" by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial", by paragraph 4(1) of the Adaptation of Laws, Order, 1950.

^aSee foot-note 2 on p. 87, ante.

^aThis section 18 was substituted for the original sec. 18 by sec. 3 of the Bengal Amusements Tax (West Bengal Amendment) Act, 1951 (West Ben. Act IV of 1951).

^aSubstituted for the words and figures "Bengal Public Gambling (Amendment) Act, 1913" by sec. 4 of the Bengal Amusements Tax (Amendment) Act, 1961 (West Ben. Act XXVIII of 1961).

of 1922.]

(Chapter II.—Taxes on certain forms of betting.—
Sections 19—22.)

West Ben.
Act XXXII
of 1957.

Gambling and Prize Competitions Act, 1957], on any race, a tax, hereinafter referred to as the betting tax, amounting to twelve and a half *per cent.* of such monies.

(2) The betting tax shall be collected and paid to the State Government by a licensed bookmaker in such manner as may be prescribed.

19. [Procedure for making over betting tax to Government.—
Omitted by sec. 4 of the Bengal Amusements Tax (West Bengal Amendment) Act, 1951 (West Ben. Act IV of 1951).]

20. (1) The Stewards of a race-meeting shall, at such times and in such manner as may be prescribed, forward to the prescribed officer returns setting out the names of the bookmakers licensed or permitted by them to carry on the business or vocation of a bookmaker at that meeting.

Accounts
of betting
tax.

(2) All licensed bookmakers shall keep accounts of all sums paid or agreed to be paid ¹[to them by backers in respect of bets], in such manner as may be prescribed, and shall, when required in writing by an officer empowered in this behalf by the ²[State Government], permit such officer, or an officer authorized in writing by him in this behalf, to inspect and take copies of such accounts.

21. (1) The totalisator tax payable under section 15 shall be recoverable as a public demand from the racing club conducting the meeting, and any portion of such tax which is not so recovered shall also be recoverable as a public demand from the stewards of the race-meeting jointly and severally.

Methods
of recovery
of totali-
sator tax
and betting
tax.

(2) All monies which a licensed bookmaker is liable ³[to pay to the State Government under section 18] shall be recoverable from the licensed bookmaker as a public demand.

22. The ⁴[State Government] may make rules for securing the payment of the totalisator tax and the betting tax, the production and inspection of accounts kept under this chapter and generally for carrying into effect the provisions of this chapter, and for dealing with such matters as are therein directed to be prescribed.

Rules.

¹These words were substituted for the words "by them to backers in satisfaction of bets" by sec. 5 of the Bengal Amusements Tax (West Bengal Amendment) Act, 1951 (West Ben. Act IV of 1951).

²See foot-note 2 on page 86, *ante*.

³These words and figures were substituted for the words and figures "to make over to the prescribed officer under section 19" by sec. 6 of the Bengal Amusements Tax (West Bengal Amendment) Act, 1951 (West Ben. Act IV of 1951).

[Ben. Act V of 1922.]

(Chapter II.—Taxes on certain forms of betting.—Section 23.)

23. [Amendment of definition of gaming.—Repealed by sec. 5 of the Bengal Amusements Tax (Amendment) Act, 1961 (West Ben. Act XXVIII of 1961).]

Bengal Act I of 1923

(The Goondas Act, 1923.)¹

AMENDED

West Ben. Act XIV of 1951.

ADAPTED

- (a) The Government of India
(Adaptation of Indian Laws)
Order, 1937.
- (b) The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
- (c) The Adaptation of Laws
Order, 1950.

(28th February, 1923.)

An Act to provide for the control of certain Goondas residing in, or frequenting Calcutta or the neighbourhood of Calcutta, and for their removal elsewhere.

WHEREAS it is expedient to provide for the control of certain goondas within Calcutta and the neighbourhood of Calcutta and to provide for their removal elsewhere in certain circumstances ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

5 & 6,
Geo. V,
c. 61 ;
6 & 7,
Geo. V,
c. 87 ;
9 & 10,
Geo. V,
c. 101.

It is hereby enacted as follows :—

1. (1) This Act may be called the Goondas Act, 1923.

(2) It extends to the whole of ²[West Bengal.]

2. In this Act—

(1) *** ** ** ** **

Short
title and
local
extent.

Defi-
nitions.

Ben. Act
IV of 1866.

(2) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, and the Port of Calcutta as defined by notification under section 5 of the Indian Ports, Act, 1908 ;

Ben. Act
II of 1866.

XV of
1908.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1922, Pt. IV, page 114 ; and for the Proceedings in Council, see the Bengal Legislative Council Proceedings, 1922, Vol. X, pages 108—108, and 406—440, and see also Vol. XI, No. 1, 1923, pages 375—427, and pages 488—468.

²These words were substituted for the word "Bengal" by paragraph (9) of Article 8 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³This clause was omitted by paragraph (1) of Article 8 and the Schedule, *ibid.*

[Ben. Act I

(Section 3.)

- (3) "Commissioner of Police" means the officer vested with the administration of police in Calcutta under the Calcutta Police Act, 1866, the Calcutta Suburban Police Act, 1866, the Calcutta Port Act, 1890, and any Act amending any of these Acts ;

Ben. Act
IV of 1866.
Ben. Act
II of 1866.
Ben. Act
III of
1890.

- (4) "goonda" includes a hooligan or other rough ;
(5) "neighbourhood of Calcutta" means the areas included in—

(a) the police-stations of Baranagore, Nawapara, Barrackpore, Dum-Dum, Tollyganj, Behala, Metiabruz, Maheshtolla, Bhangore, Tittaghar, Khardah and Budge-Budge in the district of the 24-Parganas ;

(b) the police-station of Howrah, Sibpore, Malipanchghora, Golabaree, Lilooah, Bally and Bantra in the district of Howrah ; and

(c) any other area which is included within the districts of the 24-Parganas, Howrah or Hooghly, and which the ¹[State Government] by notification in the ²[Official Gazette] may include within this definition ;

- (6) "Presidency area" means Calcutta together with that portion of the district of the 24-Parganas which is not included in Calcutta as defined in this section, and the districts of Howrah and Hooghly.

Report by
Commissioner of
Police or
District
Magistrate.

3. (1) Whenever it shall appear to the Commissioner of Police, that any person—

(a) is a goonda, or a member of a gang or body of goondas, and

(b) is residing within or habitually visiting or frequenting Calcutta,

and that such person or that such gang or body is committing or has committed or is about to commit or is assisting or abetting the commission of—

(i) a non-bailable offence against person or property, or

(ii) the offence of criminal intimidation, or

(iii) an offence involving a breach of the peace,

¹The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(2) of the Adaptation of Laws Order, 1950.

²These words were substituted for the words "Calcutta Gazette", by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1923.]

(Section 4.)

so as to be a danger to, or cause or to be likely to cause, alarm to, the inhabitants or to any section of the inhabitants of Calcutta, the Commissioner of Police shall make a report to the ¹[State Government] with a recommendation that such person or gang or body of persons be dealt with under the provisions of this Act.

(2) The same powers and duties as are conferred and imposed by sub-section (1) on the Commissioner of Police in respect of persons or gangs or bodies of persons residing in, or habitually frequenting Calcutta, are conferred and imposed on the District Magistrate having jurisdiction in any local area, which is outside Calcutta but is included in the neighbourhood of Calcutta, in respect of all persons or gangs or bodies of persons residing within or habitually visiting or frequenting such area, who appear to such District Magistrate to be goondas or members of a gang of goondas and to be committing, or to have committed or to be about to commit, or to be assisting or abetting the commission of, any of the offences set forth in clauses (i), (ii) or (iii) of sub-section (1) so as to be a danger to, or to cause or to be likely to cause, alarm to, the inhabitants or to any section of the inhabitants of such area.

4. (1) On receipt of the report of the Commissioner of Police or of the District Magistrate, as the case may be, the ¹[State Government] may make an order for the issue of a warrant for the arrest of the person against whom the report has been made.

Issue of
warrant
on receipt
of report.

(2) The warrant shall be in such a form as shall be prescribed by the ¹[State Government] by notification in the ²[Official Gazette] and shall be issued by a Secretary to the ¹[State Government] and shall contain a statement of the heads of the charges made against such person in the report, and shall further require such person to submit by petition to the advising Judges appointed under sub-section (1) of section 5 by such date as may be specified in the warrant any representation that he may desire to make.

(3) The officer by whom such warrant is issued shall have—

(i) for the enforcement of the attendance of the person, against whom the warrant is issued, at such place and at such time or times as may be specified therein (and thereafter as such officer may direct) in order to communicate to such person the final order of the ¹[State Government] made under section 6, and

¹ See foot-note 1 on page 93, ante.

² See foot-note 2 on page 98, ante.

[Ben. Act I

(Section 5.)

- (ii) for the forfeiture, under section 514 of the Code of Criminal Procedure, 1898, of any bond, executed for the attendance of such person at such place and at such time or times,

Act V
of 1898.

all the powers of a Presidency Magistrate under the Code of Criminal Procedure, 1898 ; and the warrant shall for the purposes set forth in clauses (i) and (ii) be deemed to be a warrant issued by a Presidency Magistrate, for the arrest of such person to answer a charge in respect of a bailable offence committed by him within the jurisdiction of such Magistrate, and such person, in default of sufficient security being furnished, may, unless such officer otherwise directs, be detained in custody until the final order of the ¹[State Government] under section 6 is communicated to him.

State Gov-
ernment
to place
report
before
advising
Judges.

5. (1) After issue of the warrant under section 4, the ¹[State Government] shall forthwith cause the report of the Commissioner of Police or of the District Magistrate, as the case may be, with all material facts and circumstances in their possession relevant to the same to be placed before two advising Judges, of whom one shall be ²[the District and Sessions Judge, or an Additional District and Session Judge, of 24-Parganas and the other shall be—

- (a) a District and Sessions Judge ; or
- (b) an Additional District and Sessions Judge ; or
- (c) a Subordinate Judge or a Judge of a small Cause Court who has served as such for not less than five years and as an Additional Sessions Judge or Assistant Sessions Judge for at least one year.]

(2) The advising Judges shall consider in camera the report and the other facts and circumstances, if any, adduced before them by the ¹[State Government], and any representation, submitted to them by the person against whom the report has been made within the time fixed by section 4 or such further time as they may allow, and shall call for such further information, if any, and may examine such witnesses, if any, as shall appear to them to be necessary to enable them to tender their advice on the report. They shall also give to the person against whom the report has been made, if he so desires, an opportunity of appearing in person before them to offer his explanation, and may at the instance of that person require the attendance of any other person, whose statement may support that explanation :

Provided that—

- (a) nothing in this section shall be deemed to entitle the person whose case is before the advising Judges to appear or be represented before them by pleader, nor shall the ¹[State Government] be so entitled,

¹See foot-note 1 on page 98, ante.

²The portion within square brackets was substituted for the words "a District and Sessions Judge of Alipur and the other a District and Sessions Judge who has served as such for a period of not less than five years" by sec. 2 of the Goondas (Amendment) Act, 1951 (West Ben. Act XIV of 1951).

of 1923.]

(Section 6.)

(b) the advising Judges shall not disclose to the person in question any fact the communication of which might endanger the safety of any individual, and

(c) the advising Judges shall not be bound to observe the rules of evidence and shall not permit the putting of any question which may endanger the safety of any individual.

(3) Any statement made to the advising Judges by any person other than the person whose case is before them shall be deemed to be information given to a public servant within the meaning of section 182 of the Indian Penal Code, and the advising Judges shall for the purpose of securing the attendance of any person under the provisions of sub-section (2) have all the powers of a District Magistrate under the Code of Criminal Procedure, 1898.

Act XLV
of 1860.

Act V of
1898.

(4) When the advising Judges have reached their conclusions, they shall report the same in writing to the ¹[State Government].

(5) If the person whose case is under their consideration claims, when submitting his representation or when appearing before the advising Judges, that both he and his father were born in ²[West Bengal] or that he is a member of a family which has definitely settled in ²[West Bengal] and is himself so settled, the advising Judges shall give him an opportunity of establishing his claim, and shall also give to the Commissioner of Police or the District Magistrate, as the case may be, an opportunity of rebutting the same, and at the time of submission of their report to the ¹[State Government] shall record their opinion as to whether such person has established his claim.

6. (1) On receipt of the report of the advising Judges the ¹[State Government], if satisfied that the person against whom the report has been made should be removed elsewhere, may by order reciting the conclusions of the advising Judges, as reported by those Judges—

Order of
removal
by State
Govern-
ment.

(a) direct him to leave ²[West Bengal] within such time by such route or routes, and for such period as may be stated in the order, or

(b) where the ¹[State Government] ²[is] satisfied that both he and his father were born in ²[West Bengal], or that he is a member of a family which has definitely settled in ²[West Bengal] and is himself so settled, direct him to

¹See foot-note 1 on page 98, ante.

²See foot-note 2 on page 97, ante.

³This word was substituted for the word "are" by paragraph 5(a) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sections 7, 8.)

leave the Presidency area within such time, by such route and for such period as may be stated in the order, and may in that case further order that he shall during the same period notify his place of residence and any change or intended change of residence and any absence or intended absence from his residence to the officer appointed by the ¹[State Government] in this behalf.

(2) The order of the ¹[State Government] under sub-section (1) shall be final, and shall not be called in question in any subsequent proceeding under section 9 or section 10.

Evasion
of orders.

7. Where any person on whom a warrant has been served under section 4—

(i) fails to attend at the place and at the time or times specified in the warrant and thereafter when required in order to receive the order of the ¹[State Government] under section 6, or

(ii) prior to the issue of that order, leaves ²[West Bengal] or the Presidency area, as the case may be,

the ¹[State Government] may issue the order under section 6 in the absence of that person by publishing the same in the ³[Official Gazette], and such person shall be deemed to have absconded in order to evade that order :

Provided that the ¹[State Government] may condone a failure to attend under clause (i), on reasons for such non-attendance being furnished to ⁴[its] satisfaction, and in that case such person shall not be deemed to have absconded in order to evade the order.

Identifica-
tion
order.

8. Every person, in respect of whom an order has been made under section 6 shall, if so directed by the Commissioner of Police or the District Magistrate, as the case may be,—

(i) present himself to be photographed ;

(ii) allow his finger impressions to be recorded ;

¹ See foot-note 1 on page 98, *ante*.

² See foot-note 2 on page 97, *ante*.

³ See foot-note 2 on page 98, *ante*.

⁴ This word was substituted for the word "their" by paragraph 5(i) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1923.]

(Sections 9, 10.)

- (iii) if literate, furnish such officer with specimens of his handwriting and signature ; and
- (iv) attend at such times and places as the Commissioner of Police or the District Magistrate, as the case may be, may direct for all or any of the aforesaid purposes.

9. When any person, against whom an order has been made under section 6, fails to comply with such order within the time specified therein, or after complying with the said order returns to, or after evading the said order returns to or remains in, any place within ¹[West Bengal] or the Presidency area, as the case may be, before the expiry of the period stated in the order, or fails to give to the officer appointed to receive it the information in regard to residence or absence set forth in section 6, such person may be arrested without a warrant by a police-officer and shall be liable, on conviction before a Presidency Magistrate, or a Magistrate of the first class, to be punished with rigorous imprisonment for a term which may extend to one year.

Penalty
for breach
of order
under
section 6.

10. (1) Any person who fails to comply with, or attempts to evade, any direction given in accordance with the provisions of section 8, or who absconds in order to evade any order made under section 6, shall be liable to be arrested without a warrant and shall, on conviction before a Presidency Magistrate, or a Magistrate of the first class be liable to be punished with imprisonment for a term which may extend to six months, or to a fine which may extend to one thousand rupees, or to both.

Penalty
for breach
of order
under
section 8
or for
abscond-
ing to
evade an
order
under
section 6.

(2) An offence under this section and under section 9 shall be deemed to be a non-bailable offence.

¹See foot-note 2 on page 97, *ante*.

Bengal Act VII of 1923
(The Bengal Aerial Ropeways Act, 1923.)

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Bengal Act II of 1923

(The Bengal Aerial Ropeways Act, 1923).¹

AMENDED ... Ben. Act I of 1932.

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.

ADAPTED ...

... } (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(c) The Adaptation of Laws Order, 1950.

(29th August, 1923.)

An Act to authorise, facilitate, and regulate the construction and working of aerial ropeways in Bengal.

WHEREAS it is expedient to authorise, facilitate and regulate the construction and working of aerial ropeways in Bengal ;

Preamble.

AND WHEREAS the previous sanction of the Governor General has been obtained under section 80A, sub-section (3), of the Government of India Act, to the passing of this Act ;

5 & 6, Geo.
V, c. 81 ; 6
& 7, Geo.
V, c. 87 ; 9
& 10, Geo.
V, c. 101.

It is hereby enacted as follows :—

CHAPTER I.

Preliminary.

1, (1) This Act may be called the Bengal Aerial Ropeways Act, 1923.

Short title,
local extent
and
commence-
ment.

(2) It extends to the whole of ²[West Bengal], * * * * ; and

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1923, Pt. IV, page 234 and for Proceedings in Council, see the Bengal Legislative Council Proceedings, 1923, Vol. XI, No 5, pages 17—18 and page 377, and Vol. XII, pages 41—54.

²The words "West Bengal" were substituted for the word "Bengal" by paragraph (2) of Article 8 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The words "except the Hill Tracts of Chittagong" were omitted by paragraph (1) of Article 3 and the Schedule, *ibid.*

(Chapter I.—Preliminary.—Section 2.)

(3) It shall come into force on such date¹ as the ¹[State Government] may, by notification in the ²[*Official Gazette*], direct :

Provided that it shall come into operation in the Darjeeling district only on such date and subject to such exceptions and modifications as the ³[State Government] may, by notification in the ⁴[*Official Gazette*], direct.

De-
finitions.

2. In this Act, unless there is anything repugnant in the subject or context—

- (1) "aerial ropeway" means an aerial ropeway (or any portion thereof) for the carriage of passengers, animals or goods, and includes all posts, ropes, carriers, stations, offices, warehouses, workshops, machinery and other works used for the purposes of, or in connection with, and all land appurtenant to such aerial ropeway ;
- (2) "carrier" means any vehicle or receptacle hung or suspended from, or hauled by, a rope and used for the carriage of passengers, animals or goods or for any other purpose in connection with the working of an aerial ropeway ;
- (3) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the ⁵[State Government] to discharge the functions of a Collector under this Act ;
- (4) "Inspector" means an Inspector of aerial ropeways appointed under this Act ;
- (5) "local authority" means a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund, and also includes a Local Board ;

¹This Act came into force in West Bengal, except Darjeeling district, on the 1st April, 1928—*vide* Notification No 9R., dated the 12th March, 1928, published in the *Calcutta Gazette* of 1928, Pt. I, page 511.

This Act came into force in the district of Darjeeling on the 1st August, 1928—*vide* Notification No. 12278E. A., dated the 18th July, 1928, published in the *Calcutta Gazette* of 1928, Pt. I, page 1598.

²The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1960.

³These words were substituted for the words "*Calcutta Gazette*", by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1923.]

(Chapter II.—Aerial Ropeways for Public Traffic.—Section 3.)

- (6) "order" means an order authorising the construction of an aerial ropeway under this Act ;
- (7) "post" means a post, trestle, standard, strut, stay or other contrivance or part of a contrivance for carrying, suspending or supporting a rope ;
- (8) "prescribed" means prescribed by rules made by the¹[State Government] under section 42 ;
- (9) "promoter" means—
 - (i) the¹[State Government];
 - (ii) a local authority,
 - (iii) any person,
 - (iv) any company incorporated under the Indian Companies Act, 1913, or
 - (v) any railway company as defined in the Indian Railways Act, 1890,

VII of
1913.

IX of 1890.

in whose favour an order has been made under section 7 or under section 28, or on whom the rights and liabilities conferred and imposed on the promoter by this Act, and by rules and orders made under this Act, as to the construction, maintenance and use of the aerial ropeway, have developed or have been imposed by section 40 ;

- (10) "rate" includes any fare, charge or other payment for the carriage of passengers, animals or goods on aerial ropeway ; and
- (11) "rope" includes any cable, wire, rail or way, whether flexible or rigid, for suspending, carrying or hauling a carrier, if any part of such cable, wire, rail or way is carried overhead and is suspended from, or supported on posts.

CHAPTER II.

Aerial Ropeways for Public Traffic.

Procedure and Preliminary Investigations.

3. Every application by an intending promoter other than the¹[State Government] for permission to undertake the necessary preliminary investigations in regard to a proposed aerial ropeway for the public carriage of passengers, animals or goods shall be submitted to the¹[State Government].

Application
for
concession.

¹See foot-note 2 on page, 108, *ante*.

(Chapter II.—Aerial Ropeways for Public Traffic.—Sections 4—6.)

Contents
of appli-
cation.

4. Every such application shall include—

- (a) a description of the undertaking and of the route to be followed by the proposed aerial ropeway ;
- (b) a description of the system of construction and management and of the advantages to the community to be expected from the ropeway ;
- (c) an estimate of the cost of construction thereof ;
- (d) a statement of the estimated working expenses and profits in respect thereof ;
- (e) a statement of the maximum and minimum rates which it is proposed to charge ;
- (f) such maps, plans, sections and drawings in connection therewith as the ¹[State Government] may require in order to form an idea of the proposal.

Prelimi-
nary in-
vestiga-
tions.

5. Subject to the provisions of this Act, and of section 4 of the Land Acquisition Act, 1894, the ¹[State Government] may, at ²[its] discretion, accord sanction to the intending promoter to make such surveys as may be necessary, and require him to submit such detailed estimates, plans, sections and specifications and such further information as ³[it] may deem necessary for the full consideration of the proposal.

I of 1894.

The intending promoter shall not be entitled to claim any compensation ⁴[from the Government] for any expenses incurred under this section in the event of his application being ultimately refused.

Orders authorising the Construction of Aerial Ropeways for Public Traffic.

Order
authoris-
ing con-
struction
and con-
tents of
such order.

6. (1) The ¹[State Government] may, on application made by any intending promoter, and after due consideration of the details supplied in accordance with section 5, publish in the ²[Official Gazette] a draft of the proposed order authorising the construction by, or on behalf of, such promoter, subject to such restrictions and conditions as the ¹[State Government] may think proper, of an aerial ropeway within any specified area or along any specified route—

- (a) for the public carriage of passengers ;
- (b) for the public carriage of passengers, animals and goods ; or

¹See foot-note 2 on page 108, *ante*.

²This word was substituted for the word "their" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³This word was substituted for the word "they", *ibid*.

⁴The words "from the Crown" were originally substituted for the words "from Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(2) of the Adaptation of Laws Order, 1950.

⁵See foot-note 3 on page 180, *ante*.

of 1923.]

(Chapter II.—Aerial Ropeways for Public Traffic.—Section 6.)

(c) for the public carriage of animals and goods.

(2) A notice shall be published with the draft order stating that any objection or suggestion which any person may desire to make with respect to the proposed order, if submitted to the ¹[State Government] within such period, not being less than two months from the date of such publication, as may be specified in the notice, will be received and considered.

(3) The ¹[State Government] shall also cause public notice of the intention to make the order to be given at convenient places within the said area or along the said route, and shall, so far as may be conveniently possible, cause a like notice to be served on every owner or occupier of land over which such route lies, and shall consider any objection or suggestion, with respect to the proposed order, which may be received from any person within the date specified in such notice and decide thereon.

(4) The draft of the proposed order may specify—

(i) a time within which the capital required for the construction of the aerial ropeway shall be raised ;

(ii) a time within which the construction shall be commenced ;

(iii) a time within which the construction shall be completed ;

(iv) the conditions under which a concession, guarantee or financial assistance may be given by the ¹[State Government] or a local authority to the promoter ;

(v) the right of purchase by the ¹[State Government] or by a local authority ;

(vi) the conditions relating to the structural design, quality of materials, factors of safety, method of computing stresses, and other such technical details as may be considered necessary ;

(vii) the conditions relating to the construction of the ropeway over mining properties in accordance with rules made under section 42 and over roads and other public ways of communication ²[except railways and tramways not wholly within a municipal area, and, with the previous sanction of * * * * the

¹See foot-note 2 on page 108, *ante*.

²These words were substituted for certain words by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³The words "the Federal Railway Authority or" were omitted by paragraph (1) of Article 8 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(Chapter II.—Aerial Ropeways for Public Traffic.—Sections 7, 8.)

Central Government, over such railways and tramways] ;

- (viii) the conditions under which the promoter may sell or transfer his rights to the ¹[State Government] or to a local authority, company or person ;
- (ix) the conditions under which the ropeway may be taken over by the ¹[State Government] to be worked by itself or by a local authority or by a company or person other than the promoter ;
- (x) the motive power to be used on the ropeway and the conditions (if any) on which such power may be used ;
- (xi) the minimum headway to be maintained under different parts of the rope ;
- (xii) the points under the rope at which bridges or guards shall be constructed and maintained ;
- (xiii) the amount of security (if any) to be deposited by the promoter in the event of his application being granted ;
- (xiv) the traffic which may be carried on the ropeway, the traffic which the promoter shall be bound to carry, and the traffic which he may refuse to carry ;
- (xv) the maximum and minimum rates that may be charged by the promoter and the circumstances in which and the manner in which these rates may be revised by the ¹[State Government] ; and
- (xvi) such other matters as the ¹[State Government] may deem necessary.

Final
order.

7. (1) If, after considering any objections or suggestions which may have been made in respect to the draft on or before the specified date, the ¹[State Government] ²[is] of opinion that the application should be granted with or without modifications, or subject or not to any restrictions or conditions, ³[it] shall make an order accordingly.

(2) Every order authorising the construction of an aerial ropeway for the public carriage of passengers, animals or goods shall be published in the ⁴[Official Gazette], and such publication shall be conclusive proof that the order has been made as required by this section.

Cessation
of powers
given by
an order.

8. If a promoter authorised by an order to construct an aerial ropeway for the public carriage of passengers, animals or goods does not, within the time specified in the order,—

- (a) succeed in raising the full amount of capital required for the completion of the ropeway, or
- (b) substantially commence the construction of the ropeway, or
- (c) complete the construction thereof,

¹ See foot-note 2 on page 108. *ante*.

² This word was substituted for the word "are" by paragraph 5(g) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³ See foot-note 3 on page 110. *ante*.

⁴ See foot-note 3 on page 108. *ante*.

of 1923.]

*(Chapter II.—Aerial Ropeways for Public Traffic.—
Sections 9—11.)*

the powers given to the promoter by such order shall, unless the ¹[State Government] prolongs the time so specified, cease to be exercised.

9. When the construction of an aerial ropeway has been authorised under this Act, for the public carriage of animals and goods only, the ¹[State Government] may, on application made by the promoter, sanction the opening of such ropeway for the public carriage of passengers also.

Opening of aerial ropeway to passenger traffic.

Inspection of Aerial Ropeways for the Public Traffic.

10. (1) No aerial ropeway intended for the public carriage of passengers, animals or goods shall be opened for any kind of traffic until the ¹[State Government] or an Inspector empowered by the ¹[State Government] in this behalf has, by an order, sanctioned the opening thereof for that purpose. The sanction of the ¹[State Government] under this section shall not be given until an Inspector has, after inspection of the ropeway, reported in writing to the ¹[State Government]—

Inspection of aerial ropeway before opening.

- (a) that he has made a careful inspection of the ropeway and appurtenances ;
- (b) that the moving and fixed dimensions and other conditions prescribed under sub-section (4) of section 6 and sub-section (1) of section 7 have been complied with ;
- (c) that the ropeway is sufficiently equipped for the traffic for which it is intended ;
- (d) that the by-laws and rules prescribed by sections 27 and 42 have been duly made, approved and published ; and
- (e) that the ropeway is, in his opinion, fit for public traffic and can be used without danger either to the persons, animals or goods carried thereon, or to the persons employed thereon, or to the general public.

(2) The provisions of sub-section (1) shall extend to the opening of additional sections of the ropeway, and to deviation lines and any alteration or reconstruction materially affecting the structural character or any work to which the provisions of sub-section (1) apply or are extended by this sub-section.

11. (1) The ¹[State Government] may appoint such persons as ²[it deems] fit to be Inspectors of aerial ropeways for the public carriage of passengers, animals or goods, and may fix the fees to be charged to promoters for the performance by Inspectors of their duties under this Act.

Appointment and duties of Inspectors.

¹See foot-note 2 on page 108, *ante*.

²These words were substituted for the words "they deem" by paragraph 5(a) of the Government of India (Adaptation of Indian Laws) Order, 1987.

[Ben. Act VII

(Chapter II.- Aerial Ropeways for Public Traffic.—
Sections 12—14.)

(2) It shall be the duty of any such Inspector from time to time to inspect such ropeways, and to determine whether they are maintained in a fit condition and worked with due regard to the convenience and safety of the persons using them and of the general public, and consistently with the provisions of this Act.

Powers of
Inspectors.

12. An Inspector shall, for the purpose of any of the duties which he is authorised or required to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and shall, for that purpose, have such powers as may be prescribed.

Act XLV
of 1860.

Facilities
to be
afforded to
Inspectors.

13. The promoter, and his servants and agents, shall afford to an Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act, or by rules made thereunder.

Page 114—

Construct

In the proviso to sub-section (1) of section 14, after the words "any action under", insert the word, brackets and letter "clause (a)".

Authority
of promoter
to execute
all neces-
sary works.

14. (1) under, this
ning to the
time being
and for con
traffic may—

(Inserted by West Ben. Act II of 1965, section 2.)

[No. 2, dated the 1st May, 1970.]

- (a) make such survey as he thinks necessary ;
- (b) place and maintain posts in or upon any immovable property ;
- (c) suspend and maintain a rope over, along and across any immovable property ;
- (d) make such bridges, culverts, drains, embankments and roads as may be necessary ;
- (e) erect and construct such machinery, offices, stations, warehouses and other buildings, works and conveniences as may be necessary ; and
- (f) do all other acts necessary for constructing, maintaining, altering, repairing and using the aerial ropeway :

Provided that a promoter may take any action under clause (b) or clause (c) of this sub-section, notwithstanding the objection of the owner or occupier of the property affected thereby if the Collector, after giving such owner and occupier by notice in writing an opportunity of being heard, by an order in writing, permits such action.

(2) When making an order under the proviso to sub-section (1), the Collector shall fix the amount of compensation or of annual rent or of both which should, in his opinion, be paid by the promoter to the owner of the property affected thereby, or, in the case of immovable property, to the owner or occupier thereof.

of 1923.]

*(Chapter II.—Aerial Ropeways for Public Traffic.—
Sections 15—18.)*

15. (1) Subject to the rules made under this Act a promoter may, at any time, for the purpose of examining, repairing or altering an aerial ropeway for public traffic or of preventing any accident, enter upon any immovable property adjoining such ropeway, and may do all such works as may be necessary for such purpose.

Temporary entry upon land for repairing or preventing accident.

(2) In the exercise of the powers conferred by sub-section (1), the promoter shall cause as little damage as possible, and compensation shall be paid by him for any damage so caused ; and, in a case of dispute as to the amount of such compensation, or the person to whom it shall be paid, the matter shall be referred to the decision of the Collector.

16. (1) Where any tree standing or lying near an aerial ropeway for public traffic, or where any structure or other object which has been placed or has fallen near any such ropeway subsequently to the issue of an order under section 7 in regard to such ropeway, interrupts or interferes with, or is likely to interrupt or interfere with, the construction, maintenance, alteration or use of the ropeway, the Collector may, on the application of the promoter, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.

Removal of trees, structures, etc.

(2) When disposing of an application under sub-section (1), the Collector shall, in the case of any tree in existence before the construction of the aerial ropeway, award to the person interested in the tree such compensation, if any, as he thinks reasonable, and the Collector may recover the same from the promoter in the same manner as an arrear of land revenue.

Explanation.—For the purposes of this section, the expression “tree” shall be deemed to include any shrub, hedge, jungle-growth or other plant.

17. No suit shall lie, in respect of any matter referred to in the proviso to sub-section (1) of section 14, sub-section (2) of section 14, section 15 or sub-section (1) of section 16, but every order made by a Collector under any of those sections, and every award made by him under sub-section (2) of section 16, shall be subject to revision by the ¹[State Government] except in the case of an award of compensation made by the Collector on account of action taken under clause (c) of sub-section (1) of section 14, which award shall be subject to revision by the District Judge.

Orders of Collector subject to revision by State Government.

Working of Aerial Ropeways for Public Traffic.

18. The promoter of an aerial ropeway for public traffic shall, for the purposes of working an aerial ropeway, and subject to such maximum and minimum rates as may be prescribed, have power from time to time to fix the rate for the carriage of passengers animals or goods on the aerial ropeway.

Promoter may fix rates.

¹See foot-note 2 on page 108, ante.

[Ben. Act VII

(Chapter II.—Aerial Ropeways for Public Traffic.—

Sections 19—21.)

Duty of
promoter
to work
aerial
ropeway
without
partiality.

19. No promoter shall, for the purposes of working an aerial ropeway for public traffic, make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or any particular description of traffic in any respect whatsoever, or subject any particular person or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Reporting
of acci-
dents.

20. When any of the following accidents occur in the course of working an aerial ropeway for public traffic, namely :—

- (a) any accident attended with loss of human life or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property ;
- (b) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property ;
- (c) any accident of any other description which the ¹[State Government] may specify in this behalf in the rules made under this Act ;

Act XLV
of 1860.

the promoter shall, without unnecessary delay, send notice of the accident to the ¹[State Government] and to the Inspector of the aerial ropeway ;

and the promoter's servant in charge of the station on the aerial ropeway nearest to the place at which the accident occurred or, where there is no station, the promoter's servant in charge of the section of the aerial ropeway on which the accident occurred shall, with the least possible delay, give notice of the accident to the Magistrate of the district in which the accident occurred and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magistrate and police-officer as the ¹[State Government] may appoint in this behalf.

Power to
close and
re-open
aerial
ropeway.

21. (1) If after inspecting any aerial ropeway opened to public traffic, an Inspector is of opinion that the ropeway or any specified part thereof cannot be used without danger to the public, or is no longer in a fit state for the carriage of any specified class of traffic, he shall state that opinion, together with the grounds therefor, to the ¹[State Government] ;

and the ¹[State Government], after such further inquiry, if any, as ²[it] may think fit, may thereupon order that, for reasons to be set forth in the order, the aerial ropeway, or the part thereof so specified, be closed to all traffic or to any specified class of traffic :

Provided that, in any case of extreme urgency, the Inspector may order the suspension of the working of the ropeway or any part thereof which he considers necessary, pending the orders of the ¹[State Government] on the case.

¹ See foot-note 2 on page 108, ante.

² See foot-note 3 on page 110, ante.

of 1923.]

(Chapter II.—Aerial Ropeways for Public Traffic.—
Sections 22—24.)

(2) When, under sub-section (1), an aerial ropeway or any part thereof has been closed to any traffic, it shall not be re-opened to such traffic until it has been inspected, and its re-opening sanctioned, in the prescribed manner,

Discontinuance of Aerial Ropeways for Public Traffic.

22. If, at any time after the opening of an aerial ropeway for public traffic, it is proved to the satisfaction of the ¹[State Government] that the promoter has, for three months, discontinued the working of the ropeway or of any part thereof without a reason sufficient, in the opinion of the ¹[State Government], to warrant such discontinuance, the ¹[State Government], if ²[it thinks] fit, may declare that the powers of the promoter in respect of such aerial ropeway or part thereof shall be at an end; and thereupon the said powers shall cease and determine.

Cessation of powers of promoter on discontinuance of aerial ropeway.

23. (1) When a declaration has been made under section 22, in respect of any aerial ropeway or of any part thereof, an officer appointed in that behalf by the ¹[State Government] may, at any time after the expiration of two months from the date determined as aforesaid, remove such aerial ropeway or part thereof, as the case may be;

Power of removal of aerial ropeway on cessation of promoter's powers.

and the promoter shall pay to the officer so appointed such costs of removal as shall be certified by that officer to have been incurred by him.

(2) If the promoter fails to pay the amount of costs so certified within one month after the delivery to him of the certificate or of a copy thereof, such officer may, without any previous notice to the promoter and without prejudice to any other remedy which he may have for the recovery of the said amount, sell and dispose of the materials of the aerial ropeway or part thereof so removed;

and may, out of the proceeds of the sale, pay and reimburse himself the amount of costs certified as aforesaid and of the costs of the sale;

and shall pay over the residue (if any) of such proceeds to the promoter.

Purchase of Aerial Ropeways for Public Traffic.

24. (1) When an order under section 7 has been made in favour of a promoter of an aerial ropeway for public traffic, not being the ¹[State Government], or a local authority, the ¹[State Government], or a local authority specified in the order published under section 7, shall, on the expiration of such period, not exceeding fifty years, and of every such subsequent period, not exceeding twenty years, as shall be specified in such order, have the option of purchasing the undertaking, and if the ¹[State Government], or the local authority with the previous sanction of the ¹[State Government], ³[elects] to purchase, the promoter shall sell the undertaking to the ¹[State Government] or to the local

Power of State Government and local authorities to purchase aerial ropeways for public traffic.

¹See footnote 2 on page 108, ante.

²These words were substituted for the words „they think” by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³This word was substituted for the word “elect”, *ibid*.

[Ben. Act VII**(Chapter II.—Aerial Ropeways for Public Traffic.—Section 24.)**

authority, as the case may be, on payment of the value of all lands, buildings, works, materials, plant and apparatus of the promoter, suitable to, and used by him for the purposes of, the undertaking, such value to be in case of difference or dispute determined by arbitration :

Provided that the value of such lands, buildings, works, materials, plant and apparatus shall be deemed to be their fair market value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials, plant and apparatus, and to the state of repair thereof and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking :

Provided also that there shall be added to such value, as aforesaid, such percentage, if any, not exceeding twenty *per cent.* of that value, as may be specified in the order passed under section 7, on account of compulsory purchase.

(2) Where a purchase has been effected under sub-section (1)—

(a) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the promoter or attaching to the undertaking :

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking ; and

(b) save as aforesaid, the order published under section 7, shall remain in full force, and the purchaser shall be deemed to be the promoter :

Provided that where the ¹[State Government] elects to purchase, the order under section 6 shall, after purchase, in so far as the ¹[State Government] is concerned, cease to have any further operation.

(3) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the promoter by the ¹[State Government] or the local authority, as the case may be.

(4) Notwithstanding anything hereinbefore contained, a local authority may, with the previous sanction of the ¹[State Government], waive its option to purchase, and enter into an agreement with the promoter for the working by him of the undertaking until the expiration of the next subsequent period referred to in sub-section (1) upon such terms and conditions as may be stated in the agreement,

¹ See foot-note 2 on page 108, *ante*.

of 1923.]

(Chapter II.—Aerial Ropeways for Public Traffic.—
Sections 25—27.)

25. Where, on the expiration of any of the periods referred to in section 24, neither the ¹[State Government] nor a local authority purchases the undertaking, and the order published under section 7 is, on the application or with the consent of the promoter, revoked, the promoter shall have the option of disposing of all lands, buildings works, materials, plant and apparatus belonging to the undertaking in such manner as he may think fit.

Power to promoter to sell when option to purchase not exercised and order revoked by consent.

Inability or Insolvency of Promoter.

26. (1) If, at any time after the opening of an aerial ropeway for public traffic, it appears to the ¹[State Government] that the promoter is insolvent or is unable to maintain the ropeway, or to work the same with advantage to the public, or at all, the ¹[State Government] may declare that the powers of the promoter, in respect of such aerial ropeway, shall, at the expiration of six months from the date of such declaration, be at an end; and thereupon the said powers shall, at the expiration of that period, cease and determine.

Proceedings in case of inability or insolvency of promoter.

(2) At any time after the expiration of the said six months, an officer appointed by the ¹[State Government] in that behalf, may, notwithstanding anything contained in the Provincial Insolvency Act, 1920, remove the aerial ropeway in the same manner and subject to the same provisions as to the payment of costs and to the same remedy for the recovery thereof, in every respect, as in cases of removal under section 23.

V of 1920.

By-laws.

27. (1) A promoter of an aerial ropeway for public traffic shall, subject to the provisions of sub-section (3), make by-laws—

Power to promoter to make by-laws.

- (a) for regulating the rate of speed at which carriers are to be moved or propelled;
- (b) for declaring what shall be deemed to be dangerous or offensive goods, and for regulating the carriage of such goods;
- (c) for regulating the maximum number of passengers and animals, and the maximum weight of goods, to be carried in each carrier;
- (d) for regulating the use of steam-power, or any other mechanical power or electrical power, on the aerial ropeway;
- (e) for regulating the conduct of the promoter's servants;
- (f) for regulating the terms and conditions on which the promoter will warehouse or retain goods at any station on behalf of the consignee or owner of such goods; and
- (g) generally for regulating the travelling upon, and the use, working and management of, the aerial ropeway.

¹See foot-note 2 on page 108, ante.

[Ben. Act VII]

*(Chapter III.—Private Aerial Ropeways for certain purposes.—
Sections 28, 29.)*

(2) Such by-laws may provide that any person who contravenes the provisions of any of them shall be liable to fine which may extend to any sum not exceeding fifty rupees, and that, in the case of a breach of a by-law made under clause (e) of sub-section (1), the promoter's servant responsible for the same shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the promoter from his pay.

(3) A by-law made under this section shall not take effect until it has been confirmed by the ¹[State Government] and published in the ²[Official Gazette] :

Provided that no such by-law shall be so confirmed until it has been previously published by the promoter in such manner as may be prescribed.

CHAPTER III.

Private Aerial Ropeways for certain purposes.

Applica-
tion for
acqui-
sition of
land in
case of
certain
private
aerial
ropeways.

28. (1) Where the ¹[State Government] ²[is] satisfied that the construction, extension, working or management of an aerial ropeway for private traffic is likely to prove useful to the public by reason of its facilitating the transport of commodities in general use or is required for the conservation or service of undertakings supplying those commodities, and where the intending promoter of such aerial ropeway is desirous of obtaining any land for the purpose of such construction, extension, working or management, the ¹[State Government] may, on the application of such promoter, acquire on his behalf such land under the provisions of Part VII of the Land Acquisition Act, 1894, or procure the temporary occupation of the same under the provisions of Part VI of that Act, whether the said intending promoter is or is not a company as defined in that Act.

1 of 1894.

(2) The ¹[State Government] shall by notification in the ²[Official Gazette] declare the commodities which shall be deemed to be commodities in general use for the purposes of sub-section (1).

Agree-
ment.

29. (1) No order shall be made by the ¹[State Government] under sub-section (1) of section 28 until an enquiry has been held as hereinafter provided and the intending promoter has entered into an agreement with ⁴[the State Government] in respect of the matters mentioned in sub-section (4).

(2) Such inquiry shall be held by such officer and at such time and place as the ¹[State Government] shall appoint.

¹ See foot-note 2 on page 108, *ante*.

² See foot-note 3 on page 108, *ante*.

³ See foot-note 2 on page 112, *ante*.

⁴ The words "the Provincial Government" were originally substituted for the words "the Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1923.]

(Chapter III.—Private Aerial Ropeways for certain purposes.—
Chapter IV.—Offences, Penalties and Arrest.—Sections 30, 31.)

Act V of
1908.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure ¹[, 1908,] in the case of a Civil Court.

(4) Such officer shall report to the ²[State Government] the result of the inquiry, and if the ³[State Government] ⁴[is] satisfied that the ropeway is or is likely to be useful to the public, ⁵[it] shall, subject to any rules made under section 42, require the intending promoter to enter into an agreement with ⁶[the State Government], providing to the satisfaction of the ⁷[State Government] for the following matters, namely :—

(a) the terms on which the ropeway shall be held by the promoter ;

(b) the time within which, and the conditions on which, the ropeway shall be constructed, maintained and used.

(5) Every such agreement shall, as soon as may be after its execution, be published in the ⁸[Official Gazette].

I of 1894.

30. If land is to be occupied temporarily in accordance with the provisions of sub-section (1) of section 28 on behalf of the promoter of an aerial ropeway for private traffic, and if the ⁹[State Government] on the application of the promoter so ¹⁰[directs], then the provisions of Part VI of the Land Acquisition Act, 1894, shall apply to such occupation, subject to the provisions that, notwithstanding anything contained in section 35 of the Land Acquisition Act, 1894, the occupation and use by the promoter of the land occupied shall continue for such period, not exceeding ten years, as the ¹¹[State Government] may fix, and that the compensation payable to the persons interested in such land shall be fixed with due regard to any additional loss or inconvenience caused to them by reason of such period of occupation, including loss caused by the interruption of the getting of minerals by reason of such occupation.

Tempor-
ary occupa-
tion of
land in
case of
private
aerial
ropeway.

CHAPTER IV.

Offences, Penalties and Arrest.

31. If a promoter of an aerial ropeway for public traffic—

(a) constructs or maintains an aerial ropeway otherwise than in accordance with the terms of an order made under section 7, or

Failure of
promoter
to comply
with Act.

¹These figures were inserted by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

²See foot-note 2 on page 108, *ante*.

³See foot-note 2 on page 112, *ante*.

⁴See foot-note 3 on page 110, *ante*.

⁵See foot-note 4 on page 130, *ante*.

⁶See foot-note 3 on page 108, *ante*.

⁷This word was substituted for the word "direct" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act VII]**(Chapter IV.—Offences, Penalties and Arrest.—Sections 32, 33.)**

- (b) opens an aerial ropeway or permits it to be opened in contravention of any of the provisions of section 10, or
- (c) fails to comply with the provisions of section 13, or
- (d) fails to pay within a reasonable time any compensation awarded by the Collector or by the ¹[State Government] under sections 14, 15, 16 or 17, or
- (e) contravenes any of the provisions of section 19, or
- (f) fails to send notice of any accident as required by section 20, or
- (g) fails to close an aerial ropeway in accordance with an order passed under sub-section (1) of section 21, or re-opens any aerial ropeway in contravention of sub-section (2) of that section, or
- (h) continues to exercise the powers of a promoter in respect of any aerial ropeway, in contravention of the provisions of section 22 or section 26, or
- (i) fails to comply with the provisions of section 27 or section 30, or
- (j) contravenes any of the provisions of section 37, or
- (k) contravenes the provisions of any rule made under section 42,

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act, or of any other remedy which may be obtained against him) be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing offence, to a further fine which may extend in the case of an offence specified in sub-clause (d), (e), (f), (i), (j) or (k) to fifty rupees, and in the case of an offence specified in sub-clause (a), (b), (c), (g) or (h) to one thousand rupees for every day after the first during which the offence continues to be committed.

Unlaw-
fully
ob-
structing
promoter
in exercise
of his
powers.

32. If any person without lawful excuse, the burden of proving which shall be upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing, maintaining, altering, repairing or working an aerial ropeway, or injures or destroys any mark made for the purpose of setting out the line or route of such ropeway, he shall be punished with fine which may extend to two hundred rupees.

Unlaw-
fully
inter-
fering
with
aerial
ropeway.

33. If any person without lawful excuse, the burden of proving which shall be upon him, wilfully does any of the following things, namely :—

- (a) interferes with, removes or alters any part of an aerial ropeway or of the works connected therewith,

¹ See foot-note 2 on page 108, ante.

of 1923.]

(Chapter IV.—Offences, Penalties and Arrest.—Chapter V.—
Supplementary Provisions.—Sections 34—37.)

(b) does anything in such a manner as to obstruct any carrier travelling on an aerial ropeway,

(c) attempts to do, or abets, within the meaning of the Indian Penal Code, the doing of anything mentioned in clause (a) or clause (b),

Act XLV
of 1930.

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punishable with fine which may extend to two hundred rupees.

34. If any person does anything mentioned in clauses (a), (b) or (c) of section 33 or does, attempts to do, or abets, within the meaning of the Indian Penal Code, the doing of any other act or thing in relation to an aerial ropeway with intent or with knowledge that he is likely to endanger the safety of any person travelling or being upon the aerial ropeway, he shall be punished with imprisonment for a term which may extend to fourteen years.

Malevolently doing, abetting or attempting to do, acts endangering safety of persons travelling or being upon aerial ropeway.

35. (1) If any person commits any offence under section 32 which obstructs the working of an aerial ropeway for public traffic, or commits any offence punishable with imprisonment under section 34, he may be arrested without warrant or other written authority by any servant of the promoter, or by any police-officer or by any other person whom such servant or officer may call to his aid.

Arrest for offences against certain sections.

(2) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him or to commit him for trial.

CHAPTER V.

Supplementary Provisions.

36. A promoter of an aerial ropeway for public traffic shall, in respect of such ropeway, submit to the ¹[State Government] returns of capital, receipts and traffic at such intervals and in such forms as may be prescribed.

Returns.

37. No promoter of an aerial ropeway shall, in the course of the construction, repair, working or management of such ropeway, cause any permanent injury to any public road, railway, tramway or waterway, or obstruct or interfere with, otherwise than temporarily, as may be necessary, the traffic on any public road, railway, tramway or waterway.

Protection of roads, railways, tramways, and waterways.

¹ See foot-note 2 on page 108, *ante*.

[Ben. Act VII

(Chapter V.—Supplementary Provisions.—Sections 38—40.)

Acqui-
sition of
land by a
promoter.

38. The ¹[State Government] may, if ²[it thinks] fit, on the application of any promoter of an aerial ropeway for public traffic desirous of obtaining any land for the purpose of constructing, working or managing such ropeway, direct that he may, subject to the provisions of this Act, acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner and, on the same conditions as it might be acquired if the promoter were a company.

I of 1894.

Limitation
of claims
for
damage to
animals
or goods.

39. No person shall be entitled to a refund of an overcharge in respect of animals or goods carried by an aerial ropeway for public traffic or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the promoter within six months from the date of the delivery of the animals or goods for carriage by the ropeway.

Page 124—

Appli-
cation of
Act to
certain
private
aerial
ropeways.

40. (1) In sub-section (1) of section 40, for the words "shall also apply", substitute the words "shall *mutatis mutandis*, also apply".
(o), (p) a to the pr referred to the comm

(Substituted by West Ben. Act II of 1965, section 3.)

[No. 2, dated the 1st May, 1970.]

Provided that, in the application of section 16 to any such aerial ropeway, for the words "the issue of an order under section 7" the words "the opening of the ropeway to traffic or the issue of a notification for the acquisition of, or an order for the temporary occupation of, land in accordance with the provisions of sub-section (1) of section 28, whichever is earlier," shall be deemed to be substituted.

(2) Clauses (a), (c) and (e) of sub-section (1) and sub-section (2) of section 10 shall also apply to all such private aerial ropeways constructed after the commencement of this Act, and clause (b) of section 31 shall apply to such ropeways to the extent that section 10 applies thereto.

(3) The ¹[State Government], on the application of the promoter or otherwise, may declare that the provisions of section 28 and of sub-section (1) of this section shall apply to any private aerial ropeway or class of private aerial ropeways for private traffic.

¹ See foot-note 2 on page 108, *ante*.

² See foot-note 2 on page 117, *ante*.

of 1923.]

(Chapter V.—Supplementary Provisions.—Sections 41, 42.)

41. (1) The ¹[State Government] shall, by notification in the ²[Official Gazette], constitute an Advisory Board for aerial ropeways.

Power of State Government to constitute an Advisory Board for aerial ropeways.

(2) Such Board shall consist of a Chairman to be appointed by the ¹[State Government] who shall be a Chief Engineer to the ¹[State Government] and two persons to be appointed by the ¹[State Government] as expert members.

(3) When any person is aggrieved by an order of the ¹[State Government] under section 7 or under section 21, such person, on payment of the prescribed fees, may, within thirty days of the said order, apply to the ¹[State Government] for revision of the same, and the ¹[State Government] shall take the advice of the Advisory Board in the prescribed manner and shall consider such advice and pass such orders in the matter as to the ¹[State Government] shall seem just and proper.

(4) With a view to enabling the Board to tender their advice under sub-section (3) the Board, with the consent of the ¹[State Government] and on payment of such further fees as may be prescribed, may make such further inquiry into the matter as the Board may consider to be necessary.

(5) The ¹[State Government] may, by general or special order,—

- (a) define the further duties of, and regulate the procedure of, the Advisory Board ;
- (b) determine the tenure of office of the members of the Board ; and
- (c) give directions as to the payment of fees to, and the travelling expenses incurred by, any member of such Board in the performance of his duty.

42. (1) The ¹[State Government] may, after previous publication, make rules to carry out the purposes of this Act.

Power of State Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may prescribe—

- (a) the conditions under which licenses for the construction of aerial ropeways over mining properties shall be granted, including conditions as to the assessment and payment of compensation for loss caused by the interruption of the getting of minerals by reason of such construction and conditions as to the removal of any portion of the ropeway to another alignment, to

¹See foot-note 2 on page 108, *ante*.

²See foot-note 3 on page 108, *ante*.

[Ben. Act VII of 1923.]

(Chapter V.—Supplementary Provisions.—Section 42.)

be fixed by arbitration if necessary, if at any time in the opinion of the ¹[State Government] the ropeway interferes with the raising of minerals ;

- (b) the powers of an Inspector appointed under section 11 ;
 - (c) the conditions under which and the manner in which the powers conferred on promoters by sub-section (1) of section 14 and sub-section (1) of section 15 may be exercised ;
 - (d) the accidents of which notice shall be given to the ¹[State Government] and to the Inspector under clause (c) of section 20 ;
 - (e) the duties of the promoter's servants, police-officers, and Magistrates on the occurrence of an accident ;
 - (f) the maximum and minimum rates which a promoter may fix under section 18 ;
 - (g) the standard dimensions and specifications with which the aerial ropeway is to conform ;
 - (h) the procedure for the disposal of applications under sub-section (2) of section 21 to re-open an aerial ropeway or part thereof and the conditions under which such ropeway may be re-opened ;
 - (i) the manner of previous publication of by-laws made under section 27 ;
 - (j) the intervals at which a promoter shall submit returns under section 36, and the forms in which such returns shall be submitted ;
 - (k) the preparation, submission and auditing of the accounts of the promoter ;
 - (l) the method of arbitration for the settlement of disputes ;
 - (m) the manner in which notices under this Act shall be served ;
 - (n) the manner in which, and the conditions under which, the through booking of goods may be permitted between an aerial ropeway and a railway, tramway or another aerial ropeway ;
 - (o) the safe and efficient working of aerial ropeways ;
 - (p) the fees to be charged to promoters and other persons in respect of licenses, applications, inquiries, inspection, and services rendered under this Act ; and
 - (q) the procedure for filing, hearing and disposing of applications for revision under this Act, and the procedure for taking the advice of the Advisory Board.
- (3) All rules made under this section shall be published in the ²[Official Gazette].

¹ See foot-note 2 on page 108, *ante*.

² See foot-note 3 on page 108, *ante*.

Bengal Act XII of 1923

(THE ST. THOMAS' SCHOOL ACT, 1923.)¹

AMENDED	... Ben. Act VIII of 1941. (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED	... } (b) The Adaptation of Laws Order, 1950.

(19th September, 1923).

An Act to provide for the management and future location of St. Thomas' School and for the making over of certain land for the compound of St. Thomas' Church in Calcutta to certain ecclesiastical authorities.

WHEREAS it is expedient, in order to place the affairs of St. Thomas' School in Calcutta (hitherto known as the Calcutta Free School) on a legal and stable basis, to provide for the management and future location of the said school and for the making over of certain land for the compound of St. Thomas' Church in Calcutta to certain ecclesiastical authorities ;

Preamble,

And whereas the previous sanction of the Governor-General has been obtained under section 80A, sub-section (3), of the Government of India Act, to the passing of this Act ;

5 & 6 Geo.
V, c. 61 ;
6 & 7 Geo.
V, c. 87 ;
9 & 10,
Geo. V,
c. 101.

It is hereby enacted as follows :—

PRELIMINARY.

1. (1) This Act may be called the St. Thomas' School Act, 1923.

Short
title
and
commence-
ment.

(2) This section and section 2 shall come into force at once, and the remainder of the provisions of this Act shall come into force on such date² as the ³[State Government] may, by notification in the ⁴[Official Gazette], direct.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1923, Pt. IV, page 810 ; and for proceedings in Council, see the Bengal Legislative Council Proceedings, 1923, Vol. XII, pages 64-67, and Vol. XIII, pages 205-207.

²The 12th November, 1923, see Notification No. 3237Edn., dated the 3rd November, 1923, published in the *Calcutta Gazette* of the 7th November 1923, Pt. I, page 1671.

³The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words "*Calcutta Gazette*," by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Section 2.)

CONSTITUTION.

Constitution of the Governors.

2. (1) The Governors of St. Thomas' School (hereinafter referred to as the Governors) shall be—

- (a) the Lord Bishop of Calcutta ;
- (b) the Archdeacon of Calcutta ;
- (c) the Master of the Calcutta Trades Association for the time being ;
- (d) one person of either sex to be nominated by the Bengal Chamber of Commerce ;
- (e) one person of either sex to be nominated by the Anglo-Indian and Domiciled European Association of Bengal ;
- (f) one European or Anglo-Indian Commissioner of the Corporation of Calcutta to be nominated by the Corporation ; and
- (g) the following persons, of either sex, being members of the Church of England, namely :—
 - ¹[(i) three persons to be nominated by the State² Government ;]
 - (ii) one person to be nominated by the vestry of St. Paul's Cathedral, Calcutta ;
 - (iii) two persons to be nominated by the vestry of St. John's Church, Calcutta ; and
 - (iv) one person to be nominated by the vestry of St. Stephen's Church, Kidderpore.

²(2) The Governors shall at a meeting co-opt with themselves two teachers, of either sex, of St. Thomas' School to be elected for the purpose of such co-option by the teachers of that school in the manner prescribed by rules made under section 15, and may at a meeting co-opt such other persons, of either sex, not exceeding three in number, as they may consider necessary ; and all persons co-opted under this sub-section shall be deemed to be Governors for the purposes of this Act.

(3) If any of the bodies referred to in clauses (d), (e) and (f) and sub-clauses (iii) to (iv) of clause (g) of sub-section (1) does not by such date as may be prescribed by the "[State Government] nominate the Governors mentioned therein, the "[State Government] shall nominate qualified persons to be such Governors, who shall be deemed to be Governors duly nominated by such bodies.

¹Sub-clause (i) was substituted for sub-clauses (i) and (ii) by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

²The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³This sub-section (2) was substituted for the previous sub-section (2) by sec. 2(1) of the St. Thomas' School (Amendment) Act, 1941 (Ben. Act VIII of 1941).

⁴See foot-note 3 on page, 127, ante.

of 1923.]

(Sections 3—6.)

¹(3a) If the teachers of St. Thomas' School do not by such date as may be fixed by the Governors in this behalf, elect two teachers for the purpose of co-option under sub-section (2), the Governors shall at a meeting co-opt two persons of either sex from amongst the teachers of the said school and the persons so co-opted shall be deemed to be Governors as if they had been co-opted after having been duly elected under the said sub-section.

(4) The names of the nominated and co-opted Governors shall be published in the ²[*Official Gazette*].

3. The Governors shall be a body corporate by the name of the "Governors of St. Thomas' School" having perpetual succession and a common seal and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts and to do all acts consistent with this Act, which may in their opinion be necessary for, or conducive to, the carrying out of the purposes of the school.

Incor-
poration
of the
Governors.

4. The nominated and co-opted Governors shall, save as is herein otherwise provided, hold office for a period of three years from the date of the publication of their names in the ³[*Official Gazette*]:

Period of
office of
the Gov-
ernors.

Provided that the said period of three years shall be held to include any period which may elapse between the expiration of the said three years and the date of the publication of names of new Governors in the ³[*Official Gazette*]:

Provided also that the nominated and co-opted Governors shall be eligible for re-appointment.

5. (1) The quorum necessary for the transaction of business at meetings of the Governors shall be five.

Quorum.

(2) No act of the Governors shall be invalid merely by reason of any defect or invalidity in the appointment of any nominated or co-opted Governor or by reason of the number of Governors being less than that prescribed by section 2.

6. If a nominated or co-opted Governor—

(a) dies, or

(b) is absent from the meeting of the Governors for more than six consecutive months, or

(c) desires to be discharged, or

(d) refuses to act or becomes incapable of acting,

Power to
appoint
new Gov-
ernors.

¹Sub-section (3a) was inserted by sec. 2(2) of the St. Thomas' School (Amendment) Act, 1941 (Ben. Act VII of 1941).

²See foot-note 4 on page 127, ante.

[Ben. Act XII]

(Sections 7—9.)

the authority which nominated or co-opted him may in cases (b) to (d) declare his post to be vacant and may in cases (a) to (d) nominate or co-opt, as the case may be, a new Governor to fill such vacancy for the unexpired remainder of the term for which such Governor would otherwise have continued in office.

MANAGEMENT AND PROPERTY OF ST. THOMAS' SCHOOL.

Change in the name of the school and vacation of office by existing Governors.

7. From the date when this section comes into operation—

- (i) the Calcutta Free School shall be known as St. Thomas' School, and
- (ii) the term of office of all persons then acting as Governors of the school shall cease and the St. Thomas' School Society shall cease to have any connection with the management of the school.

Property to vest in the Governors.

8. (1) All property, movable or immovable, which at the date when this section comes into operation appertains to the Calcutta Free School or is held by or on behalf of the persons then acting as Governors of the school or by the St. Thomas' School Society for the purposes of the school (including the premises specified in the First Schedule) shall, together with any property movable or immovable which may thereafter be given, bequeathed, transferred or acquired for the purposes mentioned in section 11, vest as and from such date in the Governors of St. Thomas' School as constituted by section 3 for the purposes of the school :

Provided that the Governors shall apply any funds which up to that date have been held in trust for specific purposes in connection with the school including the funds set forth in the Second Schedule, and any funds which may thereafter be so held, to the purposes for which they are held in trust.

(2) All liabilities which at the said date have been incurred by the persons then or theretofore acting as Governors or by the St. Thomas' School Society for the purposes of the school shall be deemed to be, and are hereby declared thereafter to be, liabilities of the Governors of St. Thomas' School as constituted by section 3.

Powers to Governors to remove school from present site and dispose of that site.

9. The Governors are hereby authorishd to carry out the removal of the school from the site in Free School Street, where it is in part located, to such other site or sites as the Governors may, with the sanction of the ¹[State Government], determine and the Governors are hereby empowered in that behalf to sell, lease, mortgage, or otherwise dispose of the present premises in Free School Street and the site thereof and to acquire by purchase or otherwise a suitable site or sites and to erect buildings for the purposes of the school as the Governors may, with the sanction of the ¹[State Government], determine.

¹ See foot-note 8 on page 127, ante.

of 1923.]

(Sections 10—13.)

10. The Governors shall have power from time to time—

- (a) to delegate, subject to such conditions as they think fit, any of their powers to sub-committees consisting of such Governors as they shall think fit ;
- (b) to appoint a Secretary and to fix his remuneration, if any; and
- (c) to appoint such persons as they shall think fit to employ for the purposes of the school (including school-teachers, boarding-masters, matrons, sergeants, clerks, officers and servants) and to fix their remuneration.

Power to Governors to delegate their powers and to appoint teachers and officers.

11. The purposes of St. Thomas' School are hereby declared to be as follows and, save as is otherwise herein provided, all property vested in the Governors by or under this Act shall be deemed to be held in trust for the said purposes and not otherwise :—

Purposes of St. Thomas' School.

- (1) the maintenance of an efficient school, and
- (2) the provision of a sound education, with religious instruction in accordance with the principles of the Church of England, for the children of Europeans and Anglo-Indians :

Provided that in the interpretation of the terms "European" and "Anglo-Indian" the Governors shall have due regard to any definition of those terms which may be included in the Code of Regulations for European Schools.

12. The Governors shall not be precluded by any provision in this Act from conforming to any regulations which the ¹[State Government] may impose as the conditions of a grant of money to the school.

Act not to preclude Governors from conforming to regulations of State Government.

MAKING OVER OF LAND FOR THE COMPOUND OF ST. THOMAS' CHURCH.

13. (1) The Governors are further authorised in such manner as they deem fit to make over to, and to vest in, the Lord Bishop of Calcutta and the Archdeacon of Calcutta conjointly such land (the property of the Governors), adjacent to St. Thomas' Church and not exceeding, when taken together with the land consecrated with the St. Thomas' Church building, two bighas in all, as they may deem to be necessary for the convenient user of that Church for the purposes of the Church of England.

Compound of St. Thomas' Church.

¹ See foot-note 3 on page 127, ante.

[Ben. Act XII]*(Sections 14, 15.)*

(2) The boundaries of such land shall be delineated on the ground and approved by the ¹[State Government] before action is taken by the Governors under sub-section (1).

PROVIDENT FUND.

Power to Governors to establish a provident fund or funds.

14. The Governors may, with the approval of the ¹[State Government], establish a provident fund or provident funds for the benefit of their teachers, other officers or servants (appointed in accordance with the provisions of this Act) and may compel all or any of such teachers, officers and servants to contribute to, and may make supplementary contributions to, such provident fund or funds and make payments thereout in accordance with the rules of such fund or funds.

RULES.

Power to Governors to make rules.

15. The Governors may from time to time make rules for any of the following purposes, namely :—

- (a) for their own guidance and for the conduct of their business ;
- ²(aa) prescribing the manner in which the election referred to in sub-section (2) of section 2 shall be held ;
- (b) to determine the persons by whom orders for payment of money, contracts, transfers and other documents may be signed on behalf of the Governors ;
- (c) for the management and control of the school in all its departments including any hostel that may be established in connection with the school ;
- (d) regulating the proceedings of sub-committees ;
- (e) prescribing the rates and the conditions under which contributions may be paid by the Governors and their officers, teachers and servants to the provident fund or funds which may be established under section 14, and determining the conditions of payments from such fund or funds.

¹See foot-note 8 on page 127, *ante*.

²Clause (aa) was inserted by sec. 3 of the St. Thomas' School (Amendment) Act, 1941 (Ben. Act. VIII of 1941).

of 1923.]

(The First and Second Schedules.)

THE FIRST SCHEDULE.

(See section 8.)

(1) With the exception of the St. Thomas' Church building and the land consecrated therewith, measuring one hundred and eighteen feet by fifty-nine feet, the site with buildings thereon known as the Calcutta Free School, situated at 58, Free School Street, 28, Marquis Street, and 6, Marquis Lane, Calcutta, measuring about thirty-one bighas, and bounded as follows :—

“On the north by pucca houses, a small Church known as St. Joseph's (Madrasi) Chapel and Market Street ; on the south by a house and Marquis street ; on the east by a house and Collin Street (formerly called Collinga Bazar Street) ; and on the west by Free School Street.”

(2) The leasehold of the land and buildings, known as Kidderpore House, situated on 4, Diamond Harbour Road in Kidderpore in the district of 24-Paraganas, containing an area of twenty-one decimal nought four acres or thereabouts, and bounded as follows :—

“On the north by St. Stephen's Church compound and Government land of the Cattle Market, on the north-east corner by the Orphangunge Road ; on the east by the premises of the Zoological Gardens and the Meteorological Observatory compound ; on the south by the land of the lines of the Governor's Body Guard ; and on the west by the compound of St. Stephen's Parsonage and Dimond Harbour Road.”

THE SECOND SCHEDULE.

(See section 8.)

LIST OF FUNDS.

1. Provident Fund.
2. Retiring Allowance Fund.
3. Apprentice Fund.
4. Thompson “Rex Ludorum” Fund.
5. Samuel Benjamin Taylor Fund.

Bengal Act III of 1925

The Bengal Highways Act, 1925.¹

AMENDED

West Bengal Act XVII of 1953.

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.

ADAPTED

(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(c) The Adaptation of Laws Order, 1950.

(24th September, 1925.)

An Act to provide for the better maintenance and control of Government roads in Bengal.

WHEREAS it is expedient to provide for the regulation and safety of traffic on Government roads in Bengal, for the prevention of obstruction and encroachments, and of nuisances on or near such roads, for the preservation of such roads, and for the temporary closing of such roads for repairs or other works, or for public purposes ;

AND WHEREAS the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Highways Act, 1925.

(2) It shall extend to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the ⁴[State Government] may, by notification in the ⁵[Official Gazette], direct.

2. In this Act, unless there is anything repugnant in the subject or context,—

“Government road” means a road vested in ⁶[the Government], or under the control and administration of, the Public Works Department of the ⁴[State Government], and includes—

Short title, extent and commencement.

Definition.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1925, Part IV, page 7 ; and for proceedings in Council, see the Bengal Legislative Council Proceedings, 1925, Vol. XVIII, pages 69-78.

²These words were substituted for the word “Bengal” by paragraph (2) of Article 8 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³This Act came into force on the 1st July, 1928—*vide* Notification No. 20., dated the 6th June, 1928, published in the *Calcutta Gazette* of 1928, Part I, page 1278.

⁴The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵These words were substituted for the words “*Calcutta Gazette*”, by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁶The words “the Crown” were originally inserted by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “Government” was substituted for the word “Crown” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act III

(Sections 3, 4.)

- (a) the slope, berm, borrow-pits and side-drains of any such road ;
- (b) all lands and embankments vested in, or under the control and administration of, the said Public Works Department, and attached to a Government road ;
- (c) all bridges, culverts or causeways built on or across any Government road ; and
- (d) all fences and posts on any Government road or on any land attached to a Government road, and all road-side trees on such land :

Provided that nothing in this definition shall affect the provisions of the Calcutta Municipal Act, 1923¹, or of any rule or by-law made thereunder, in so far as they empower the Corporation of Calcutta to take action in respect of the Government roads now under the control of the Corporation.

Ben. Act
III of
1923.

Temporary
closing of
Govern-
ment
road.

3. The ²[State Government] or any officer empowered by the ³[State Government] in this behalf may, by public notice, displayed in a conspicuous portion of the road, declare any Government road or part thereof to be closed temporarily for the purpose of repairing such road, or for the purpose of constructing any sewer, drain, culvert or bridge, or for any other similar public purpose :

Provided that the ³[State Government] or any officer empowered by the ³[State Government] in this behalf shall, before declaring any such road or part thereof to be closed, be bound, where possible, to provide other reasonably sufficient means of access to holdings adjacent to such road or part, if no such means of access already exist :

Provided also that where there is a stretch of road over half a mile in length, the road or part thereof closed at any one time shall not exceed half a mile in length, and that, where possible, in such closed parts, an alternative route shall be provided.

Power to
make
rules.

4. (I) The ³[State Government] may make rules—

- (i) for the regulation and safety of traffic on Government roads ;
- (ii) for the prevention * * * * *
of nuisances on or near such roads ;
- (iii) for the preservation of such roads ; and
- (iv) for the temporary closing of such roads for repairs or other works, or for the purposes specifically set forth in section 3.

¹The Calcutta Municipal Act, 1923 (Ben. Act III of 1923) was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951) and this reference should now be construed as a reference to the latter Act.

²See foot-note 4 on page 135, *ante*.

³The words "of obstruction and encroachments and" were omitted by sec. 2 of the Bengal Highways (Amendment) Act, 1953 (West Ben. Act. XVII of 1953).

of 1925.]

(Sections 5, 6.)

(2) All rules made under this section shall be published in the ¹[*Official Gazette*] and, on such publication, shall have the same effect as if enacted in this Act.

(3) The power to make rules under this section is subject to the condition of the rules being made after previous publication and to the following further conditions, namely :—

(a) a draft of the rules shall be published by notification in the ¹[*Official Gazette*] and in local newspapers, and

(b) such draft shall not be further proceeded with until after the expiration of a period of one month from such publication.

5. In making any rule under this Act, the ²[State Government] may direct that a breach thereof shall be punishable with a fine which may extend to ten rupees, and when the breach is a continuing one, with a further fine not exceeding one rupee for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

Penalties.

³6. (1) Any person who encroaches or creates any obstruction upon any Government road or causes such encroachment or obstruction, shall be punishable with fine which may extend to two hundred and fifty rupees and with a further fine not exceeding ten rupees for every day after the date of the conviction during which the encroachment or the obstruction continues. The Court may also direct at the time of the conviction that the encroachment or the obstruction shall be removed within a specified date by the person convicted.

Penalties for encroachment or obstruction.

(2) If the encroachment or the obstruction is not removed within the specified date, the Court shall cause the encroachment or the obstruction to be removed, if necessary, by force. Any expense incurred in removing the encroachment or the obstruction shall, upon being authenticated by the Court, be recoverable from the person convicted as if it were a fine.

¹ See foot-note 5 on page 135, *ante*.

² See foot-note 4 on page 135, *ante*.

³ Section 6 was added by sec. 8 of the Bengal Highways (Amendment) Act, 1958 (West Ben. Act XVII of 1958).

Bengal Act IV of 1926

(THE HOWRAH BRIDGE ACT, 1926.)

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19. Power to State Government to make rules.
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21. Indemnity.
22. (*Omitted.*)
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Bengal Act IV of 1926

THE HOWRAH BRIDGE ACT, 1926.¹

AMENDED	{ Ben. Act V of 1936. West Ben. Act XIX of 1959. West Ben. Act XXIII of 1963.
ADAPTED	...	...	{ The Government of India (Adaptation of Indian Laws) Order, 1937. The Adaptation of Laws Order, 1950.

[The 9th September, 1926.]

An Act to provide for the construction, maintenance and control of a new bridge across the river Hooghly between Calcutta and Howrah.

WHEREAS it is expedient that a new bridge across the river Hooghly between Calcutta and Howrah be constructed and maintained ;

AND WHEREAS the previous sanction of the Governor General under sub-section (3), of section 80A, of the Government of India Act has been obtained, to the passing of this Act ;

5 & 6, Geo.
V, c. 61 ;
6 & 7 Geo.
V, c. 87 ;
9 & 10,
Geo.
V. c. 101.

It is hereby enacted as follows :—

1. (1) This Act may be called the Howrah Bridge Act, 1926.

Short title
and com-
mence-
ment.

(2) It shall come into force on such date^a as the ^a[State Government] may, by notification, direct.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

“(1) “Calcutta” means the area described in Schedule I to the Calcutta Municipal Act 1951, as deemed to have been amended under section 593 of that Act ;

(2) “the Commissioners” means the Commissioners for the new Howrah Bridge, hereinafter incorporated under the provisions of section 3 ;

(3) “notification” means a notification published in the ^a[Official Gazette] ;

West Ben.
Act
XXXIII of
1951.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1924, Part IV, page 18 ; and for Proceedings in Council, see the Bengal Legislative Council Proceedings, Volume XVI, pages 135-158, Volume XVIII, pages 61-69, Volume XX—No. 3, page 258, and Volume XXII, pages 163-220.

^aThe 1st April, 1927. See notification No. 20., dated the 30th March, 1927, published in the *Calcutta Gazette* of the 7th April, 1927, Part I, page 699.

^aThe words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

^aClause (1) was substituted for the original clause by sec. 2(a) of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959).

^aThese words were substituted for the words “*Calcutta Gazette*” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act IV

(Sections 3, 4.)

- (4) "the existing bridge" means the floating bridge across the river Hooghly, the construction of which was authorised by the Howrah Bridge Act, 1871 ; and

Ben. Act
IX of
1871.

- ¹(4a) "Tollygunge" means the area which was formerly comprised in the municipality of Tollygunge and which was included within Calcutta by notification under section 594 of the Calcutta Municipal Act, 1951 ;

West Ben.
Act
XXXIII
of 1951.

- (5) "year" means a financial year.

Provisions
of Act to
be carried
out by
body of
Commis-
sioners.

3. (1) The duty of carrying out the provisions of this Act shall, subject to such conditions and limitations as are herein-after contained, be vested in a body of Commissioners to be called "the Commissioners for the new Howrah Bridge".

(2) Such body shall be a body corporate and have perpetual succession and a common seal, and shall by its corporate name sue and be sued.

(3) The Commissioners for the Port of Calcutta for the time being shall be the Commissioners for the new Howrah Bridge.

(4) The Commissioner shall be entitled to receive such fees for the performance of their duties under this Act as the ²[State Government] may, by rule, prescribe. Such fees shall be paid from the new Howrah Bridge Trust Fund created by this Act.

Repeal of
Ben. Act
IX of 1871.

4. (1) The Howrah Bridge Act, 1871, shall be repealed on and from such date as the ³[State Government] may, by notification, specify in this behalf ; but this repeal shall not affect the past operation of that Act, or anything done or suffered, or any right, privilege, obligation or liability acquired, accrued or incurred thereunder.

Property
and
moneys of
existing
bridge to
vest in the
Commis-
sioners in
trust.

(2) All properties, funds and dues which on the said date are vested in the Commissioners for the Port of Calcutta in trust for the purposes of the Howrah Bridge Act, 1871, shall from such date vest in them as the Commissioners under this Act in trust for the purposes of this Act and for such purposes may be disposed of by the Commissioners in such manner as they think fit.

(3) All contracts and liabilities which on the said date have been made or incurred by the Commissioners for the port of Calcutta for the purposes of the Howrah Bridge Act, 1871, may, so far as they are outstanding on such date be enforced by and against them as the Commissioners under this Act.

(4) All suits and other legal proceedings instituted before the said date by or against the Commissioners for the Port of Calcutta under the Howrah Bridge Act, 1871, may be continued by or against them as the Commissioners under this Act.

¹Clause (4a) was inserted by sec. 2(b) of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959).

²See foot-note 3 on page 141, ante.

of 1926.]

(Sections 5--7.)

5. The Commissioners may—

Power to construct a new bridge and to take order with existing bridge.

(a) cause a new bridge to be constructed across the river Hooghly between Calcutta and Howrah of such design, and of such materials of such quality, and at such place and with such approaches as the Commissioners, subject to the approval of the ¹[State Government], consider suitable ;

(b) notwithstanding anything contained in the Howrah Bridge Act, 1871, take such order with the existing bridge as the Commissioners, subject to the approval of the ¹[State Government], consider essential in connection with the construction of the new bridge ; and

(c) cause the new bridge and its approaches to be maintained and controlled.

Ben. Act IX of 1871.

6. (1) The Commissioners may ²[, from time to time,] borrow any sum necessary for carrying out the works specified in clauses (a) and (b) of section 5 ³[or repaying any loan raised under the provisions of this Act] at such rate of interest, and for such period, and upon such terms as to the time and method of repayment, and on such other terms and conditions, as the ¹[State Government] may approve.

Power to raise loans.

(2) The ¹[State Government] shall have power to guarantee the service and repayment of any loan raised under the provisions of sub-section (1) or any part of such loan.

7. (1) The ¹[State Government] may, by notification, order the Commissioners to undertake the works referred to in section 5 and to ⁴[borrow any sum necessary for carrying out the works specified in clauses (a) and (b) of that section] within such period as the ¹[State Government] shall fix, and the Commissioners shall comply with such order.

Power of State Government to order Commissioners to undertake works and raise loans.

(2) The ¹[State Government] may, by notification, for reasons to be recorded therein, extend the period fixed under the provisions of sub-section (1).

¹See foot-note 8 on page 141, *ante*.

²These words were inserted by section 2(1) of the Howrah Bridge (Amendment) Act, 1935 (Ben. Act V of 1935).

³These words within square brackets were inserted by section 2(2), *ibid*.

⁴The proviso was omitted by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵These words, brackets and letters were substituted for the words and "raise the loan referred to in section 6" by section 8 of the Howrah (Amendment) Act, 1935 (Ben. Act V of 1935).

[Ben. Act IV

(Section 8.)

Power to
levy taxes.

8. It shall be lawful for the ¹[State Government] at any time after the commencement of this Act, to cause to be levied for the purposes of this Act all or any of the following taxes :—

- ²(i) (1) a tax of not more than one-half *per cent.* on the annual valuation of all lands and buildings in Calcutta (excluding Tollygunge), as determined by the Corporation of Calcutta under Chapter XI of the Calcutta Municipal Act, 1951 ;

West Ben.
Act
XXXIII
of 1951.

- (2) a tax of not more than one-quarter *per cent.* on the annual valuation of all lands and buildings in Tollygunge as determined under the Calcutta Municipal Act, 1951, read with any notifications or orders issued or made under section 595 thereof ;

- ³(ia) a tax of not more than one-quarter *per cent.* on the annual valuation of all lands and buildings in the municipality of Howrah as determined under Chapter X of the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah and, until such valuation is made under that Act, on the annual rateable value of holdings situated within that municipality as determined under section 96 of the Bengal Municipal Act, 1884, and continued under the provisions of the Bengal Municipal Act, 1932 ;

Ben. Act
III of 1923.

Ben. Act
III of 1884.
Ben. Act
XV of
1932.

- (ii) a tax of not more than one-quarter *per cent.* on the annual rateable value of holdings situated within ⁴[the South Suburban Municipality] as determined by the Municipal Commissioners, under section 96 of the Bengal Municipal Act, 1884, ⁵[and, on the annual valuation of all lands and buildings situated within the Garden Reach Municipality constituted under the Garden Reach Municipality Act, 1932, as continued under section 13 of that Act, and thereafter on the

Ben. Act
III of 1932.

¹See foot-note 3 on page 1, *ante*.

²Clause (i) was substituted for the original clause by sec. 3(1) of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959).

³Clause (ia) was inserted by sec. 4(1) of the Howrah Bridge (Amendment) Act, 1935 (Ben. Act V of 1935).

⁴The words "within the Tollygunge and South Suburban municipalities" were originally substituted for the words "within the municipalities of Howrah and Tollygunge and within the South Suburban municipality" by sec. 4(2) of the Howrah Bridge (Amendment) Act, 1935 (Ben. Act V of 1935), and thereafter the words "the South Suburban Municipalities" were substituted, for the words "the Tollygunge and South Suburban municipalities" by sec. 3(2) of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959).

⁵These words were added by sec. 4(3) of the Howrah Bridge (Amendment) Act, 1935 (Ben. Act V of 1935).

of 1926.]

(Section 8.)

annual rateable value of holdings situated within that municipality as determined under the Bengal Municipal Act, 1932 :]

¹Provided that the tax referred to in clause (i), (ia) or (ii) shall not be levied—

Ben. Act
XV of
1932.

(a) on any land, building or holding which is exempt under the Calcutta Municipal Act, 1923 ²[as extended to the Municipality of Howrah or the Calcutta Municipal Act, 1951], from the consolidated rate or under the Bengal Municipal Act, 1932, from the rate on holdings, as the case may be ; and

Ben. Act
III of 1923.
West Ben.
Act
XXXIII
of 1951.

(b) on any municipal property which is not intended to be let out to tenants or for otherwise deriving an income therefrom ;

³(iii) a tax of not more than three *naye paise* on every quintal of goods except salt, manganese ore, coal and coke, conveyed on the Eastern Railway and the South Eastern Railway into or from Howrah Station ;

Explanation.—In this clause ‘quintal’ means one hundred kilograms ;

(iv) a tax of not more than ⁴[two *naye paise* on every passenger] on those railways brought to or taken from the said station :

Provided that the said tax may in the case of passengers taking suburban season tickets be calculated at the rate of ⁵[twenty five *naye paise*] *per mensem* for each such ticket or at such lower rate as the ⁶[State Government] may, by notification, prescribe ;

(v) a tax at the rate of ⁷[three *naye paise*] in the case of a first class passenger, and at the rate of ⁸[two *naye paise*] in the case of a second class passenger travelling by ⁹[any steam-vessel plying as a ferry within, or partly within and partly without, the limits of the

¹This proviso was inserted by section 4(4) of the Howrah Bridge (Amendment) Act, 1935 (Ben. Act V of 1936).

²These words within square brackets were inserted by sec. 3(3) of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959).

³Clause (iii) was substituted for the former clause by sec. 2(1) of the Howrah Bridge (Amendment) Act, 1962. (West Ben. Act XXIII of 1962).

⁴Substituted for the words “three pies on every passenger” by sec. 2 (2) (a), *ibid.*

⁵Substituted for the words “four annas” by sec. 2(2) (b), *ibid.*

⁶See foot-note 3 on page 141, *ante*.

⁷Substituted for the words “six pies” by sec. 2(3) (a), *ibid.*

⁸Substituted for the words “three pies” by sec. 2(3) (b), *ibid.*

⁹These words within square brackets were substituted for the words, brackets, figures and letters “the ferry service established by the Commissioners for the Port of Calcutta under the provisions of clause (7a) of section 85 of the Calcutta Port Act, 1890,” by section 4(5) of the Howrah Bridge (Amendment) Act, 1935 (Ben. Act V of 1936).

(Section 9.)

Port of Calcutta], in respect of each single journey so made by him, the fare of which is ¹[six naye paise or more] : **

²Provided that the said tax may, in the case of passengers taking season tickets, be calculated at the rate of ³[fifty naye paise] *per mensem* for each such first class ticket and at the rate of ⁴[twenty-five naye paise] *per mensem* for each such second class ticket or at such lower rate as the ⁵[State Government] may, by notification, prescribe ; and

* * * * *

⁷*Explanation.*—In this section and in section 9 the word “steam-vessel” means every description of vessel propelled wholly or in part by the agency of steam and includes a vessel which is propelled by electrical or mechanical power.

Collection
of taxes.

9.⁸(a1) (1) The tax leviable under sub-clause (1) of clause (i) of section 8 shall be treated as if it were a part of the consolidated rate imposed under section 165 of the Calcutta Municipal Act, 1951 ;

(2) the tax leviable under sub-clause (2) of clause (i) of section 8 shall be treated as if it were a part of the municipal rates leviable under the Calcutta Municipal Act, 1951, read with any notifications or orders issued or made under section 595 thereof ;

(3) the tax leviable under sub-clauses (1) and (2) of clause (i) of section 8 shall be collected by the Corporation of Calcutta. It shall be paid to the Commissioners in such manner and subject to such allowances and deductions as may be provided for by regulations made by the State Government in this behalf. Such regulations shall be deemed to have come into force in respect of Calcutta (excluding Tollygunge) on and from the 1st day of April, 1952 and in respect of Tollygunge on and from the 1st day of April, 1953 and shall provide that any payments made to the Commissioners by the Corporation of Calcutta or by the

West Ben.
Act
XXXIII
of 1951.

¹Substituted for the words “one anna or more” by sec. 2(3) (c) of the Howrah Bridge (Amendment) Act, 1962 (West Ben. Act XXII of 1962).

²The word “and” at the end of clause (v) was omitted, and this proviso was added by section 4(6) of the Howrah Bridge (Amendment) Act, 1985 (Ben. Act V of 1986).

³Substituted for the words “eight annas” by sec. 2(2) (d) (i) of the Howrah Bridge (Amendment) Act, 1962 (West Ben. Act XXIII of 1962).

⁴Substituted for the words “four annas” by sec. 2(2) (d) (ii), *ibid.*

⁵See foot-note 8 on page 141, *ante*.

⁶Clause (vi) was omitted by sec. 2(4) of the Howrah Bridge (Amendment) Act, 1962 (West Ben. Act XXIII of 1962).

⁷This *Explanation* was added by section 4(8) of the Howrah Bridge (Amendment) Act, 1985 (Ben. Act V of 1986).

⁸Sub-section (a1) was inserted by sec. 4(1) of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959).

of 1926.]

(Section 9.)

West Ben.
Act XIX
of 1959.

Commissioners of the Tollygunge Municipality under this Act before the Howrah Bridge (Amendment) Act, 1959 comes into force shall be adjusted against any tax to be collected and paid in accordance with the provisions of this sub-section and the regulations.

Ben. Act
XV of
1932.

¹(1) The tax leviable under clause (ii) of section 8 shall be treated as if it were a part of the rates leviable under section 123 of the Bengal Municipal Act, 1932 and shall be collected by the Commissioners of the municipalities named in that clause in the manner provided in the Bengal Municipal Act, 1932.

Ben. Act
III of 1928.

²(1a) The tax leviable under clause (ia) of section 8 shall be treated as if it were a part of the consolidated rate imposed under section 124 of the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah, and shall be collected by the Commissioners of that municipality in the manner provided in the said Act.

(2) The tax leviable under clause (iii) of section 8 shall be collected on goods imported or exported by rail, by means of a surcharge on freight, by the administration of the railway by which the goods are carried.

(3) The tax leviable under clause (iv) of section 8 shall be collected by means of a surcharge on fares, by the administration of the railway by which the passengers are carried.

(4) The tax leviable under clause (v) of section 8 shall be collected by means of a surcharge on fares, by ³[the owner of the steam-vessel by which the passengers are carried].

4 *

*

*

*

(6) The taxes collected as prescribed ⁵[in sub-sections (1) to (4) of this section] shall be paid direct to the Commissioners by the collecting agency at such times as may be prescribed by the

¹Sub-section (1) was substituted for the original sub-section by sec. 4(2) of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959). *ibid.*

²Sub-section (1a) was inserted by sec. 5(2) of the Howrah Bridge (Amendment) Act, 1955 (Ben. Act V of 1936).

³These words were substituted for the words "the Commissioners for the Port of Calcutta" by sec. 5(3), *ibid.*

⁴Sub-sections (5) and (5a) were omitted by sec. 3(7) of the Howrah Bridge (Amendment) Act, 1962 (West Ben. Act XXIII of 1962).

⁵The words "in sub-sections (1) to (5a) of this section" were originally substituted for the words "in this section" by sec 4(4) of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959), and thereafter the words "in sub-sections (1) to (4) of this section" were substituted for the words "in sub-sections (1) to (5a) of this section" by sec. 3(2), *ibid.*

[Ben. Act IV

(Sections 10, 11.)

¹[State Government] after making such deduction as the ¹[State Government] may approve to meet any expenses incurred in connection with the levy and collection of the said taxes.

²*Explanation 1.*—The word “administration” as used in sub-sections (2) and (3) has the same meaning as in clause (6) of section 3 of the Indian Railways Act, 1890.

IX of 1890.

³*Explanation 2.*—The word “owner” as used in sub-section (4) has the same meaning as in the Indian Steam-vessels Act, 1917.

I of 1917.

construction
of
tramway
and contri-
bution
therefor.

10. (1) Subject to the approval of the ¹[State Government], the Commissioners may authorise any person to construct, maintain and use a tramway or tramways over the new bridge and its approaches on such terms as the Commissioners may consider suitable.

(2) When any person is authorised under sub-section (1) to construct, maintain and use a tramway or tramways over the new bridge and its approaches, he shall pay to the Commissioners at such time and in such manner as the Commissioners may, by notification, prescribe, such sum or sums as the Commissioners may, from time to time, require as his contribution for the purposes of sub-section (1) :

Provided that if any disagreement arises between the Commissioners and such person, in regard to any of the matters referred to in this sub-section, the question shall be determined by the ¹[State Government].

contribution
by
State
Government.

11. The ¹[State Government] shall pay a sum of four lakhs of rupees per annum towards the service and repayment of ³[any loan] raised under the provisions of section 6 :

Provided that, if the ¹[State Government] in accordance with the provisions of section 12 reduce the rate of the taxes leviable under clauses (i) ⁴[(...)] ⁵Page 148—

those clauses, they shall contribute by a sum equal to the total yield of the tax the year following the year in which the said taxes during

Omit section 11.

(Omitted by West Ben. Act XII of 1965, section 2.)

[No. 2, dated the 1st May, 1970.]

¹See foot-note 8 on page 141, ante.

²The original *Explanation* was numbered as *Explanation 1* and *Explanation 2* was added by sec 5(6) of the Howrah Bridge (Amendment) Act, 1985 (Ben. Act V of 1986).

³These words were substituted for the words “the loan” by sec. 6(a), *ibid.*

⁴These brackets and letters were inserted by sec. 6(b), *ibid.*

⁵This word was substituted for the word “either” by sec. 6(c), *ibid.*

⁶This word was substituted for the word “two” by sec. 6(d), *ibid.*

of 1926.]

(Sections 12—15.)

12. The ¹[State Government] may, by notification, subject to the provisions of section 8—

Power to State Government to vary taxes, etc., and make exceptions.

- (i) vary the rates at which the taxes **** leviable under that section are to be paid ;
- (ii) exempt all or any classes of persons on whom, or of vehicles or goods on which, taxes are leviable under that section from payment thereof :

Provided that the ¹[State Government] may by notification cancel or modify any order made under this section.

13. (1) All property, movable and immovable, acquired or in any way otherwise procured for the construction, improvement, maintenance and control of the new bridge and its approaches, and the new bridge and its approaches and all moneys received by the Commissioners under this Act shall vest in the Commissioners in trust for the purposes of this Act.

Property and moneys to vest in the Commissioners in trust.

(2) All moneys received by the Commissioners for the purposes of this Act shall form a separate fund which shall be known as the new Howrah Bridge Trust Fund.

(3) The ¹[State Government] may by rule provide for the payment of moneys into the new Howrah Bridge Trust Fund, for the investment by the Commissioners of moneys received into that fund and for the custody and disbursement of such moneys.

14. The Commissioners shall keep such accounts as the ¹[State Government] may prescribe of all expenditure in or about the construction or maintenance of the new bridge and its approaches, and of the collection of taxes and contributions in relation to the new bridge, and also of the income derived from taxes and contributions. The accounts shall be examined from time to time by auditors appointed in this behalf by the ¹[State Government].

Accounts.

15. The Commissioners shall for each year prepare an estimate of income to be received and expenditure to be incurred by them in accordance with, and for the purposes of, this Act in the manner set forth in sections 69, 70, 71 and 72 of the Calcutta Port Act, 1890 ²[subject to the modification that in applying sections 69, 71 and 72 of the Calcutta Port Act, 1890, for the words 'Central Government', wherever they occur, the words 'State Government' shall be deemed to be substituted].

Estimates of income and expenditure.

Ben. Act
III of 1890.

¹See foot-note 3 on page 141, *ante*,

²The words "and other payments" were omitted by sec. 5 of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959).

³These words and figures were added by sec. 6, *ibid*.

(Sections 16—18.)

Procedure
on failure
of local
authorities
to make
payment.

16. If ¹* * * the Corporation of Calcutta or the Commissioners of any of the municipalities named in ²[clauses (ia) and (ii)] of section 8 fail to make any payment as required by section 9, the ³[State Government] may attach ⁴[the Municipal Funds] or any portion thereof, and the provisions of section 118, sub-section (2) of the Calcutta Municipal Act, 1923 ⁵[or section 152, sub-section (2) of the Calcutta Municipal Act, 1951, as the case may be], shall, with all necessary modifications, be deemed to apply.

Ben. Act
III of 1923
West Ben.
Act
XXXIII
of 1951.

Recoveries.

17. Any sum due to the Commissioners under the provisions of this Act shall be recoverable by the Commissioners in the manner provided for the recovery of a public demand.

Powers in
case of
default by
Commis-
sioners.

18. If in the opinion of the ⁶[State Government] the Commissioners have made default in the performance of their duties under this Act, the ⁷[State Government] may, by notification, dissolve the body established by section 3 and may, by notification, establish another body of trustees for the purpose of this Act, or take under their own management the construction, maintenance, improvement and control of the new bridge and its approaches and the arrangements for the service and repayment of ⁸[any loan] raised under the provisions of section 6; and thereafter for all the purposes of this Act the powers conferred and duties imposed by this Act upon the Commissioners and all contracts entered into or liabilities incurred by the Commissioners under this Act shall be deemed to be transferred to ⁹[the said trustees] or to the ¹⁰[State Government], as the case may be, may enter on the new bridge and its approaches and may take possession of the same and of all properties and moneys vested by this Act in the Commissioners.

¹ The words "the Commissioners for the Port of Calcutta or" were omitted by sec. 7(1) of the Howrah Bridge (Amendment) Act, 1935 (Ben. Act V of 1935).

² These words, brackets and letters were substituted for the word, brackets and letters "clause (ii)" by sec. 7(2), *ibid.*

³ See foot-note 8 on page 141, *ante*.

⁴ These words were substituted for the words "the funds of the Commissioners for the Port of Calcutta or the Municipal Funds, as the case may be, or any of them" by sec. 7(3) of the Howrah Bridge (Amendment) Act, 1935 (Ben. Act V of 1935).

⁵ These words were inserted by sec. 7 of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959).

⁶ These words were substituted for the words "the loan" by sec. 8 of the Howrah Bridge (Amendment) Act, 1935 (Ben. Act V of 1935).

⁷ These words were substituted for the words "the trustees so appointed" by sec. 8 of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959).

of 1926.]

(Sections 18A—20.)

¹18A. Lands required for the construction of the new Howrah Bridge including its foundations, approaches and slopes or for any improvement thereof together with all structures on such lands forming part of the said bridge which vest in the Commissioners under sub-section (1) of section 13,—

(i) shall be exempt, or

(ii) shall not be exempt

from the consolidated rate leviable under section 165 of the Calcutta Municipal Act, 1951 or leviable under section 124 of the Calcutta Municipal Act, 1923, as extended to the municipality of Howrah according as—

(i) they are not, or

(ii) they are

let out to tenants or otherwise utilized for deriving income.

Explanation.—For the purpose of this section the amount received under any agreement by the Commissioners from the Calcutta Tramways Company, Limited for the use of the new Howrah Bridge by the latter shall not be regarded as rent or income.

²19. (1) The State Government may, after previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the State Government may make rules—

(a) for regulating the collection of taxes which may be imposed under this Act and the payment thereof to the Commissioners ;

(b) for prescribing the method of examination by auditors under section 14 of the accounts kept by the Commissioners ;

(c) for the safe and convenient use of the new Howrah Bridge and the approaches thereto and any tramway constructed thereon ;

(d) for the passage of boats and vessels under or through the new Howrah Bridge.

³20. The State Government may, in order to ensure the safety of the new Howrah Bridge or its approaches,—

(i) prohibit the sinking of tube-wells, or

(ii) direct the removal of any particular tube-well already sunk, likely in its opinion to endanger such safety,—

within such distance from the piers of the said bridge

Lands and structures of the new bridge when to be exempt from or when to be liable to municipal taxation.

Power to State Government to make rules.

Power to prohibit the sinking of, or remove, tube-well.

West Ben. Act XXXIII of 1951. Ben. Act III of 1923.

¹Section 18A, which was originally inserted by sec. 9 of the Howrah Bridge (Amendment) Act, 1935 (Ben. Act V of 1936), was substituted by sec. 9 of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959).

²Section 19 was substituted for the original section by sec. 10 of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959).

³Section 20 was substituted for the original section by sec. 11, *ibid.*

[Ben. Act IV of 1926.]

(Sections 21—23.)

as may be specified by it by notification, after consultation with the Commissioners, the Corporation of Calcutta and the Commissioners of the Municipality of Howrah.

Indemnity.

21. No person shall be entitled to any compensation for any loss or injury which he may sustain by reason of any obstruction to the navigation of the river Hooghly which may be caused by operations connected with the dismantling or removal of the existing bridge and its approaches or the construction or repair of the new bridge and its approaches, or for any interference with any rights vested or otherwise, which may result from operations connected with the dismantling or removal of the existing bridge and its approaches or the construction or repair of the new bridge and its approaches.

22. (Penalty for infringement of by-law.)—Omitted by sec. 12 of the Howrah Bridge (Amendment) Act, 1959 (West Ben. Act XIX of 1959).

Offences and penalties.

23. The acts or omissions referred to in column 1 of the table below shall be deemed to be offences and they shall be punishable to the extent mentioned in the corresponding

After section 23, add the following section, namely:—
 "Naming of the new Howrah Bridge State Government may, by notification, appoint,—
 as *Rabindra Setu*."

(a) the new Howrah Bridge constructed under the provisions of this Act shall be called the *Rabindra Setu*, the body of Commissioners incorporated under section 3 shall be called the Commissioners for the *Rabindra Setu*, and the fund created under section 13 shall be known as the *Rabindra Setu Trust Fund*; and

(b) all references in this Act or in any rule, order or notification made thereunder or in any instrument to the new Howrah Bridge, the Commissioners for the new Howrah Bridge and the new Howrah Bridge Trust Fund shall be construed respectively as references to the *Rabindra Setu*, the Commissioners for the *Rabindra Setu* and the *Rabindra Setu Trust Fund*."

(Added by West Ben. Act XII of 1965, section 3.)

[No. 2, dated the 1st May, 1970.]

2	ceeding five hundred
	ceeding five hundred
	ty rupees per day
	ance is a continuing
	may extend to fifty
	imprisonment which
	to fourteen days or
	tion by sec. 18 of the
	XIX of 1959).

Bengal Act I of 1927

(The Calcutta Vehicles Act, 1927.)¹

Adapted { (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
(c) The Adaptation of Laws Order, 1950.

(20th October, 1927),

An Act to provide for the better control of horse-drawn vehicles in Calcutta.

Whereas it is expedient to provide for the better control of horse-drawn vehicles in Calcutta ;

It is hereby enacted as follows :—

PART I.

Preliminary.

1. (1) This act may be called the Calcutta Vehicles Act, 1927. Short title, extent and commencement.
(2) It shall apply in the first instance only to Calcutta.
(3) It shall come into force on such date² as the ³[State Government] may, by notification, direct.
2. The ³[State Government] may, by notification—
(a) extend this Act or any portion thereof, to any town or local area other than Calcutta ; and Further provisions as to extent.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1927, Pt. IV, page 44 ; and for proceedings in Council, see the Proceedings of the Bengal Legislative Council, 1927, Vol. XXVI, page 169.

²This Act came into force on the 1st August, 1928—*vide* Notification No. 8263Pl., dated the 29th June, 1928, published in the *Calcutta Gazette* of 1928, Pt. I, page 1419.

³The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act I

(Part I.—Preliminary.—Part II.—Provisions of General Application.—Sections 3, 4.)

- (b) exclude from, or include in, Calcutta or any other town or local area to which this Act is extended under clause (a), any local area in the vicinity of the same and defined in the notification :

Provided that no notification under this section shall be published in respect of any area included in a Military Cantonment without the previous sanction of the ¹[Central Government] :

Provided also that, before finally publishing any notification under this section, the ²[State Government] shall publish a draft of the same in such manner as it may think fit, and any rate-payer or inhabitant of the area affected by such draft may, if he objects to the draft, submit his objection in writing to the ³[State Government] within six weeks from its publication, and the ⁴[State Government] shall take such objection into consideration.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

- (1) "Calcutta" means subject to the exclusion or inclusion of any local area by notification under clause (b) of section 2, the area described in Schedule I to the Calcutta Municipal Act, 1923⁵ ;
- (2) "notification" means a notification published in the ⁶[Official Gazette] ;
- (3) "prescribed" means prescribed by rules under this Act ;
- (4) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public are granted access or over which they have a right to pass ;
- (5) "vehicle" means any wheeled vehicle drawn by a horse or horses and used for the conveyance of human beings ; but does not include a hackney-carriage as defined in section 4 of the Calcutta Hackney-carriage Act, 1919.

Ben. Act
III of
1928.Ben. Act
I of 1919.

PART II.

Provisions of General Application.

4. (1) No person under the age of eighteen years shall drive a vehicle in any public place.

(2) No owner or person in charge of a vehicle shall allow any person under the age of eighteen years to drive the same in any public place ; and in the event of a contravention of sub-section (1), the Court may presume that the vehicle was driven with the consent of the owner or person in charge.

¹These words were substituted for the words "Governor General in Council", by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot note 8 on page 158, *ante*.

³The Calcutta Municipal Act, 1923 was repealed and re-enacted by the Calcutta Municipal Act, 1961 (West Ben. Act XXXIII of 1961) and this reference should now be construed as a reference to the latter Act.

⁴These words were substituted for the words "Calcutta Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Prohibition of driving Vehicles by persons under eighteen.

of 1927.]

*(Part II.—Provisions of General Application.—Part III.—
Licensing and control.—Sections 5—11.)*

5. The person in charge of a vehicle shall cause the vehicle to stop and to remain stationary so long as may reasonably be necessary—

Duty to stop vehicle for regulating traffic and in case of accident.

(a) when required to do so by any police-officer for the purpose of regulating traffic or of ascertaining his name and address with a view to prosecuting such person under this Act or for any purpose connected with the enforcement of the provisions of this Act or the rules thereunder, or

(b) when he knows or has reason to believe that an accident has occurred to any person or to any animal or conveyance in charge of a person owing to the presence of the vehicle, and he shall also give his name and address and the name and address of the owner of such vehicle, to any police-officer in uniform present or to any person reasonably requesting such names and addresses.

6. Whoever drives a vehicle in a public place recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place, and the amount of traffic which actually is at the time or which might reasonably be expected to be, in the place, shall, on conviction, be punishable with fine which may extend to five hundred rupees.

Reckless driving.

PART III.

Licensing and Control.

7. No person shall drive a vehicle in a public place unless he is licensed in the prescribed manner, and no owner or person in charge of a vehicle shall allow any person who is not so licensed to drive it.

Licensing of drivers.

8. The holder of a licence shall not allow it to be used by any other person.

Transfer of licence.

9. The driver of a vehicle shall produce his licence upon the spot when required by any police-officer to do so.

Production of licence.

10. Every licence to drive a vehicle shall be valid in such area as may be specified therein.

Extent of validity of licence of driver.

11. (1) The owner of every vehicle shall cause it to be registered in the prescribed manner.

Registration of vehicles.

(2) Such registration shall be valid in such area as may be specified in the certificate of registration.

(Part III.—Licensing and control.—Section 12.)

Power of
State
Govern-
ment
to make
rules.

12. (1) The ¹[State Government], subject to the condition of previous publication, shall make rules for the purpose of carrying into effect the provisions of this Act and of regulating, in the whole or any part of ²[West Bengal], the use of vehicles or any class of vehicles in public places.

(2) In particular, and without prejudice to the generality of the foregoing powers, the ¹[State Government] may make rules for all or any of the following purposes, namely :—

- (a) providing for the registration of vehicles, and the conditions subject to which they may be registered; the fees payable in respect of and incidental to registration, the notification of any changes of ownership, and the area in which, and the duration for which, certificates of registration shall be valid ;
- (b) providing for facilitating the identification of vehicles by the assignment to them of distinguishing numbers and the displaying upon them of number and name plates, or in any other manner ;
- (c) regulating the construction and equipment of vehicles, including the provision and use of lights, bells or other appliances ;
- (d) prescribing the authority by which, and the conditions subject to which, drivers of vehicles or any class of such drivers may be licensed, the fees payable in respect of such licenses, and the area within which, and the duration for which licenses shall be valid ;
- (e) prescribing the authority by which, and the conditions and limitations subject to which, licenses may be suspended or cancelled ;
- (f) prescribing the precautions to be observed when vehicles are standing in any public place ;
- (g) prohibiting or regulating the driving of vehicles in public places, where their use may, in the opinion of the ¹[State Government], be attended with danger or inconvenience to the public ;
- (h) prescribing the authority who shall give and the manner of giving the notice referred to in section 13 ; and
- (i) providing generally for the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property, or of obstruction to traffic.

¹ See foot-note 3 on page 153, *ante*.

² The words "West Bengal" were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

of 1927.]

(Part III.—Licensing and control.—Part IV.—Miscellaneous.—
Sections 13—17.)

(3) All rules made under this section shall be published in the ¹[Official Gazette]; and, on such publication, shall have effect as if enacted in this Act.

13. The prescribed authority shall give, in the prescribed manner, public notice of any rule, made by the ²[State Government] under section 12, prohibiting or regulating the driving of vehicles in any public place; and for the purpose of giving effect to any such rule, shall display conspicuous notices at or near the place to which the rule refers.

Posting of notices.

14. The ³[State Government] may, by notification, exclude any area specified in such notification from the operation of this Part; and may, by a like notification, exempt either generally or for a specified period any vehicle or class of vehicles from the operation of all or any of the provisions of this Part.

Power to State Government to exclude areas and to exempt vehicles from this Part.

PART IV.

Miscellaneous.

15. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punishable with fine which may extend to one hundred rupees, and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to two hundred rupees.

Penalties.

16. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act or any rule made thereunder.

Cognisance of offences.

17. (1) The ⁴[State Government] may * * * declare any person disqualified for obtaining a licence under this Act either permanently or for such period as it thinks fit.

Cancellation and suspension of licence and disqualification for obtaining licence.

(2) The prescribed authority may subject to such conditions and limitations as may be prescribed, cancel or suspend any licence granted under this Act.

(3) Any Court by which any person is convicted of an offence against the provisions of this Act or any rule made thereunder or of any offence in connection with the driving of a vehicle shall, if

¹See foot-note 4 on page 154, ante.

²See foot-note 8 on page 153, ante.

³The words "in its discretion" were omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act I of 1927.]

(Part IV.—Miscellaneous.—Section 17.)

such person holds a licence under the Act, cause particulars of the conviction to be endorsed thereon and may, in respect of such person and of his licence, if any, exercise the like powers as are conferred by sub-section (1) on the ¹[State Government] and by sub-section (2) on the prescribed authority :

Provided that no order made by a Court under this sub-section shall affect any person or licence for a period exceeding one year from the date of such conviction.

(4) Any Court before which the holder of a licence under this Act is accused of any offence mentioned in sub-section (3) may suspend such licence until the termination of the proceedings before it.

(5) A copy of every order of cancellation, suspension or disqualification made under this section in respect of a licence or the holder of a licence shall be endorsed on the licence, and a copy of every endorsement, in accordance with the provisions of this section, shall be sent to the authority by which such licence has been granted.

(6) Every holder of a licence shall, when called upon to do so, produce his licence before any authority acting under this section.

(7) A person whose licence has been cancelled or suspended in accordance with the provisions of this section, shall, during the period for which such order of cancellation has effect, or during the period of suspension, as the case may be, be disqualified for obtaining a licence.

(8) No person whose licence has been endorsed or who has been disqualified for obtaining a licence shall apply for, or obtain, a licence without giving particulars of such endorsement or disqualification.

¹ See foot-note 3 on page 153, *ante*.

Bengal Act I of 1928¹

(THE BENGAL BORSTAL SCHOOLS ACT, 1928.)²

ADAPTED

- (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
- (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
- (c) The Adaptation of Laws Order, 1950.

(16th February, 1928.)

An Act to make provision for the establishment and regulation of Borstal schools for the detention and training of adolescent offenders.

WHEREAS it is expedient to make provision for the establishment and regulation of Borstal schools for the detention and training of adolescent offenders ;

Preamble.

And whereas the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Borstal Schools Act, 1928.

Short title and extent,

(2) It extends to the whole of ³[West Bengal].

2. In this act, unless there is anything repugnant in the subject or context—

Definitions

(1) “adolescent offender” means any person who has been convicted of any offence punishable with imprisonment or who having been ordered to give security under section 106 or section 118 of the Code of Criminal Procedure, 1898, has failed to do so or who, having been dealt with under the provisions of section 562 of the Code of Criminal Procedure, 1898, has failed to enter into a bond or find securities or who, when the bond has been cancelled under section 126A of that Code, has failed to give fresh security and who at the time of such conviction or failure to give security—

(i) in any area where the Bengal Children Act, 1922, is in force, is not less than sixteen nor more than twenty-one years of age, or

¹This Act should be read with section 51 of the West Bengal Children Act, 1959 (West Ben. Act XXX of 1959) and notifications (1) No. 1955S.W./1H—15/60, dated the 22nd June, 1961 (2) No. 284-S.W./L.H.—48/61, dated 8.2.63 and (3) No. 479 S.W./4A—4/63, dated 15.3.63. which bring certain sections of the latter Act into force in Calcutta, Howrah, and certain other places of Howrah and 24-Parganas districts and other areas.

²For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1927, Pt. IV, page 38 ; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XXVI, pages 79 and 141.

³The words “West Bengal” were substituted for the word “Bengal” by Article 8(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

5 & 6 Geo.
V, c. 61 ; 6
& 7 Geo.
V, c. 87 ; 9
& 10 Geo.
V, c. 101.

Act V. of
1898.

Ben. Act
II of 1922.

[Ben. Act I

(Sections 3—5.)

- (ii) in any other area is not less than fifteen nor more than twenty-one years of age ;
- (2) "Borstal school" means a school established by the ¹[State Government] under section 3 ;
- (3) "Inspector-General" means the Inspector-General of Prisons and includes any officer appointed by the ¹[State Government] to perform all or any of the duties imposed, or to exercise all or any of the powers conferred by this Act, on the Inspector-General ; and
- (4) "prescribed" means prescribed by rules made under this Act.

Establishment of Borstal schools.

3. (1) The ¹[State Government] may establish Borstal schools at such places as it may think fit wherein adolescent offenders may be detained and given such industrial training and other instruction and be subjected to such disciplinary measures and moral influences as in the opinion of the ¹[State Government] will conduce to their reformation and the prevention of crime.

(2) For every Borstal school, a Visiting Committee shall be appointed in such manner as may be prescribed and the names of the members of the Visiting Committee or, when a member is appointed *ex-officio*, the office by virtue of which he has been appointed shall be published in the ²[Official Gazette].

Application of the Prisons Act, 1894, and the Prisoners Act, 1900. Power of Court to make order for detention in Borstal school.

4. Subject to the provisions of this Act, the provisions of the Prisons Act, 1894, and the Prisoners Act, 1900, shall apply to a Borstal school established under this Act as if it were a prison and an inmate thereof a prisoner.

IX of 1894. III of 1900.

5. (1) If it appears to the High Court, a Court of Sessions or the Court of a District Magistrate, a Subdivisional Magistrate, a salaried Presidency Magistrate or any Magistrate of the first class specially empowered by the ¹[State Government] in this behalf in any case that comes before such Court originally, on appeal or in revision that an adolescent offender convicted by such Court or any Court subordinate to it or failing to obey an order made by such Court or any Court subordinate to it to give security under section 106 or section 118 or to enter into a bond or find security under section 562 or section 126A of the Code of Criminal Procedure, 1898, should be detained in a Borstal school, the Court may, in lieu of passing a sentence of imprisonment, make an order for the detention of the adolescent offender in a Borstal school for a term which shall not be less than two and shall not exceed three years.

Act V of 1898.

¹The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1928.]

(Sections 6, 7.)

(2) Before making an order under sub-section (1) the Court shall—

- (a) inquire into the age of the offender and, after taking such evidence (if any) as may be deemed necessary, shall record a finding thereon stating his approximate age ;
- (b) after considering any report or representation which may be made to it as to the desirability of the detention of the adolescent offender in a Borstal school, satisfy itself that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to profit by such detention.

6. (1) If any Court not empowered to pass an order of detention in a Borstal school under sub-section (1) of section 5 is of opinion that an adolescent offender who has been convicted by such Court or having been ordered by such Court to give security has failed to do so is a proper person to be detained in a Borstal school, the Court may, in lieu of passing sentence, record such opinion and submit the record of the case and forward the adolescent offender to or take bail for his appearance before the District Magistrate or Subdivisional Magistrate to whom he is subordinate or a salaried Presidency Magistrate.

Procedure where the Court is not empowered to pass an order of detention in a Borstal school.

(2) Before forwarding an adolescent offender or taking bail for his appearance in accordance with the provisions of sub-section (1) the Court shall make the inquiry and record the finding prescribed in clause (a) of sub-section (2) of section 5 in respect of such adolescent offender.

(3) A District Magistrate, Sub-divisional Magistrate or salaried Presidency Magistrate, to whom an adolescent offender is forwarded or before whom an adolescent offender appears in accordance with the provisions of sub-section (1) may make such further inquiry (if any) as he may think fit and may, subject to the conditions contained in clause (b) of sub-section (2) of section 5, make an order for the detention of the adolescent offender in a Borstal school for a term which shall not be less than two and shall not exceed three years, or may return the record of the case to the Court which tried it for passing such sentence as that Court may think fit.

7. (1) Any adolescent offender in respect of whom an order of detention in a Borstal school is made under section 5 or section 6 by a Court in any case that comes before it originally may appeal—

Appeal.

- (a) if the order is made by a Court of Session or a Court of a salaried Presidency Magistrate to the High Court ; or
- (b) if the order is made by the Court of any Magistrate other than a salaried Presidency Magistrate, to the Court of Session ;

within two months from the date of such order.

[Ben. Act I

(Sections 8—11.)

(2) The procedure prescribed for appeals in Chapter XXXI of the Code of Criminal Procedure, 1898, shall apply as far as possible to appeals under this section.

Act V of
1898.

(3) The Appellate Court may dismiss the appeal or may—

(a) reverse the order and make any other order or pass any sentence which might have been lawfully made or passed in respect of the adolescent offender by the Court which passed the order of detention ; or

(b) alter the term of detention subject to the limits prescribed in sub-section (1) of section 5.

Procedure
after mak-
ing order
under
section 5.

8. (1) Every adolescent offender directed by a Court to be sent to a Borstal school shall be forthwith sent to the place of intermediate custody prescribed in this behalf in respect of such Court.

(2) A copy of the order of the Court directing the adolescent offender to be detained in a Borstal school shall forthwith be sent by the Court to the Inspector-General, who shall take immediate steps for the removal of the adolescent offender from the place of intermediate custody to a Borstal school as soon as may be practicable.

(3) The period during which the adolescent offender is kept in the prescribed place of intermediate custody shall, for the purposes of computing his total period of detention in a Borstal school, be deemed to be part of that detention.

Limitation
on powers
conferred
by section
5.

9. Any person detained in a Borstal school for failure to furnish security when ordered to do so under section 106, section 118, section 562 or section 126A of the Code of Criminal Procedure, 1898, shall be released on furnishing such security or on the passing of an order under section 124 of the Code.

Power of
Inspector-
General to
transfer
adolescent
prisoners
to Borstal
school.

10. If the Inspector-General is satisfied that any adolescent offender sentenced to undergo imprisonment in a jail or detention in a reformatory school is a proper person to be detained in a Borstal school, he may, subject to the prescribed conditions, direct that the adolescent offender shall be transferred to a Borstal school and there be detained for the whole or any part of the unexpired residue of his sentence. The provisions of this Act shall thereupon apply to such person as if he had been originally sentenced to detention in a Borstal school.

Removal
from one
school to
another.

11. The Inspector-General may at any time order an adolescent offender to be removed from one Borstal school to another such school.

Provided that the total period for which the adolescent offender was ordered to be detained in a Borstal school shall not be increased by such removal.

of 1928.]

(Sections 12, 13.)

12. (1) Subject to the prescribed conditions, the Inspector-General may, on the recommendation of the Visiting Committee, at any time after the expiration of six months from the commencement of the detention of an adolescent offender in a Borstal school, if he is satisfied that there is a reasonable probability that the adolescent offender will abstain from crime and lead a useful and industrious life, discharge him from the Borstal school and grant him a written license in the prescribed form and on the prescribed conditions permitting him to live under the supervision and authority of such—

Power to
release on
license.

- (a) ¹[servant of the Government],
- (b) secular institution,
- (c) religious society, or
- (d) responsible person,

as may be approved by the Inspector-General and willing to take charge of the adolescent offender :

Provided that if in any case the Inspector-General does not accept the recommendation of the Visiting Committee under this sub-section, he shall ²[report to the State Government] his reasons for not accepting the recommendation :

Provided also that no adolescent offender shall be permitted by license to live under the supervision and authority of a religious society professing a religion other than the religion of the adolescent offender except with his consent or that of his guardian, if any.

(2) A license under this section shall be in force until the expiry of the term for which the adolescent offender was ordered to be detained in a Borstal school, unless sooner revoked or forfeited.

(3) The period during which an adolescent offender is absent from a Borstal school during the continuance of a license granted to him under this section shall, for the purposes of computing his term of detention in such school, be deemed to be part of that detention.

13. (1) Subject to the prescribed conditions, the Inspector-General may at any time, with the approval of the ³[State Government] and shall, at the request of the institution, society or person

Revocation
of license.

¹The words "servant of the Crown" were originally substituted for the words "officer of Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "report to the Provincial Government" were originally substituted for the words "report to Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³See foot-note 1 on page 160, *ante*.

(Sections 14, 15.)

under whose supervision and authority the adolescent offender has by license been permitted to live, revoke a license granted under section 12, and upon such revocation the adolescent offender shall be detained in a Borstal school until the expiry of the term for which he was ordered to be detained in such school.

(2) If an adolescent offender removes himself from the supervision of the institution, society or person under which he was by license permitted to live, his license shall be deemed to have been revoked from the date on which he has so removed himself.

Powers of
arrest of
police.

14. Any police-officer, not below the rank of a Sub-Inspector of Police may, without orders from a Magistrate and without warrant, arrest an adolescent offender who has escaped from a Borstal school or removed himself from the supervision of the institution, society or person under which he was permitted to live by licence under section 12, and shall send him, if so arrested, in custody to the Borstal school in which he was last detained.

Transfer
of in-
corrigibles,
etc., to
prisons.

15. Notwithstanding anything elsewhere contained in this Act, If an adolescent offender detained in a Borstal school—

(a) is reported to the ¹[State Government] by the Visiting Committee of such school to be incorrigible or to be exercising a bad influence on the other inmates of the school, or

(b) escapes from the Borstal school or removes himself from the supervision of the institution, society or person under which he was permitted to live by license under section 12,

the ¹[State Government] may alter the unexpired residue of the term of detention to such term of imprisonment of either description as the ¹[State Government] may determine :

Provided that the period of imprisonment shall not exceed—

(a) such unexpired residue, or

(b) the maximum period of imprisonment provided by law for the offence or the failure to give security, as the case may be, in consequence of which the adolescent offender was ordered to be detained in a Borstal school,

whichever is less :

Provided further that no such adolescent offender shall be ordered by the ¹[State Government] to be punished with rigorous imprisonment unless such imprisonment was provided by law for the original offence or the failure to give security, as the case may be, in consequence of which he was ordered to be detained in a Borstal school.

¹ See foot-note 1 on page 160, *ante*.

of 1928.]

(Section 16.)

16. (1) The ¹[State Government] may make rules for carry- Rules.
ing out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[State Government] may make rules to provide for all or any of the following matters, namely :—

- (a) the control and management of Borstal schools ;
- (b) the appointment, powers and duties of officials in such schools ;
- (c) the constitution, powers and duties of Visiting Committees ;
- (d) the classification, treatment, maintenance, education, industrial training and control of the inmates of Borstal schools ;
- (e) the regulation of the powers of the Inspector-General under sections 10, 12 and 13 ;
- (f) the prescribing of places of intermediate custody in respect of Courts to which such Courts may order adolescent offenders to be sent ; and
- (g) the form and conditions of licenses granted under section 12.

(3) All rules made under this section shall be published in the ²[*Official Gazette*] and, on such publication, shall have the same effect as if enacted in this Act.

¹See foot-note 1 on page 160, *ante*.

²See foot-note 2 on page 160, *ante*.

Bengal Act VI of 1930

(The Bengal Criminal Law Amendment Act, 1930.)¹

SUPPLEMENTED	..	Act VIII of 1932.
EXTENDED TO COOCH BEHAR		West Ben. Act XXX of 1950.
AMENDED	..	Ben. Act IV of 1932. Ben. Act VII of 1934.
ADAPTED		<div style="display: flex; align-items: center;"> <div style="font-size: 4em; margin-right: 10px;">{</div> <div> <p>(a) The Government of India (Adaptation of Indian Laws) Order, 1937.</p> <p>(d) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.</p> <p>(c) The Adaptation of Laws Order, 1950.</p> </div> </div>

(16th October, 1930.)

An Act to supplement the ordinary criminal law in Bengal.

WHEREAS it is expedient to supplement the ordinary criminal law in Bengal ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act :—

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Criminal Law Amendment Act, 1930.

(2) It shall come into force on the nineteenth day of October, 1930.

(3) It extends to the whole of ²[West Bengal].

* * * * *

2. (1) ⁴[Where, in the opinion of the State Government⁵, there are reasonable grounds for believing that any person—

(i) is a member of an association of which the objects and methods include the commission of any offence included

Short title,
commence-
ment and
extent.

Power of
State
Govern-
ment to
deal with
certain
suspects.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1930, Part IV, page 125 ; and for proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XXXV, pages 600 and 688.

²The words "West Bengal" were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³Sub-section (4) was omitted by sec. 18 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

⁴These words within square brackets were substituted for the original words by sec. 2 of the Bengal Criminal Law Amendment Act, 1932 (Ben. Act IV of 1932).

⁵The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Section 2.)

in the First Schedule or the doing of any act with a view to interfere by violence or threat of violence, with the administration of justice ; or

(ii) has been or is being instigated or controlled by a member of any such association with a view to the commission or doing of any such offence or act ; or

(iii) has done or is doing any act to assist the operations of any such association ;

the State Government¹ may, by order in writing, give all or any of the following directions, namely, that such person—

(a) shall notify his residence and any change of residence to such authority as may be specified in the order ;

(b) shall report himself to the police in such manner and at such periods as may be so specified ;

(c) shall conduct himself in such manner or abstain from such acts as may be so specified ;

(d) shall reside or remain in any area so specified ;

(e) shall not enter, reside in, or remain in any area so specified ;

(f) shall be committed to custody in jail ;

and may at any time add to, amend, vary or rescind any order made under this section :

Provided that such order shall be reviewed by the ¹[State Government] at the end of one year from the date of making of the order, and shall not remain in force for more than one year unless upon such review the ¹[State Government] directs its continuance.

(2) The ¹[State Government] in its order under sub-section (1) may direct—

(a) the arrest without warrant of the person in respect of whom the order is made at any place where he may be found by any police officer or by any ²[servant of the Government] to whom the order may be directed or endorsed by or under the general or special authority of the ¹[State Government] ;

(b) the search of any place specified in the order which in the opinion of the ¹[State Government] has been, is being, or is about to be used by such person, for the purpose of doing any act, or committing any offence, of the nature described in sub-section (1).

¹See foot note 5 on page 167, *ante*.

²The words "servant of the Crown" were originally substituted for the words "officer of Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1930.]

(Section 2A.)

2A. (1) Where, in the opinion of a District Magistrate, there are reasonable grounds for believing that any person within the district of which such Magistrate is in charge—

Power of District Magistrate to deal with certain youthful persons.

- (i) is under the age of twenty-one years,
- (ii) is ordinarily resident within the said district, and
- (iii) is consorting with a member of any association referred to in clause (i) of sub-section (1) of section 2,

the District Magistrate may, in accordance with rules to be made in this behalf under section 13 and after consultation, where practicable, with the parent or guardian of such person, by order in writing, give such directions regulating the conduct or restricting the movements of such person or prescribing the place where he shall reside within the district, or such other directions, as the District Magistrate may consider necessary for the purpose of protecting such person from the influence of members of and persons connected with any association referred to in clause (i) of sub-section (1) of section 2 and may, at any time, add to, amend, vary or rescind any order made under this section :

Provided that such order shall be reviewed by the District Magistrate within one year from the date of making the order, and shall not remain in force for more than one year unless upon such review the District Magistrate directs its continuance.

(2) The District Magistrate in his order under sub-section (1) may, in order to secure compliance with the order, direct the arrest without warrant of the person in respect of whom the order is made at any place where he may be found by any police officer or by any ³[servant of the Government] to whom the order may be directed or endorsed under the general or special authority of the ³[State Government] .

(3) The ³[State Government] may, at any time, cancel or revise any order made under this section.

(4) When, in the opinion of the District Magistrate, a person in respect of whom an order under sub-section (1) has been made attains the age of twenty-one years the District Magistrate shall report the case to the ³[State Government] and the order shall be deemed to continue in force for six months from the date of such report unless it is cancelled in the meantime.

¹Section 2A was inserted by sec. 14 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

²See foot-note 2 on page 168, *ante*.

³See foot-note 5 on page 167, *ante*.

(Sections 3, 4.)

Explanation 1.—In this section the word “guardian” includes any person who, in the opinion of the District Magistrate, has, for the time being, the charge of or control over the person in respect of whom the order is made.

Explanation 2.—For the purpose of sub-section (1) a student of any educational institution shall be deemed to be ordinarily resident, not only within the district in which he ordinarily resides, but also within the district in which such institution is situated.

Service of
orders
under sec-
tions 2
and 2A.

3. ¹[(1)] An order made under sub-section (1) of section 2 ²[or sub-section (1) of section 2A] shall be served on the person in respect of whom it is made in the manner provided in the Code of Criminal Procedure, 1898, for service of a summons, and upon such service such person shall be deemed to have had due notice thereof.

Act V of
1898.

¹[2] If an order made under sub-section (1) of section 2 is not served personally on the person in respect of whom it is made, and due diligence has, in the opinion of the ³[State Government], been exercised to effect such service, the ³[State Government] may, by a notification published in the ⁴[*Official Gazette*] and in such newspapers as it thinks fit, direct the said person to appear before such ⁵[servant of the Government] at such place and within such period as may be specified in the notification for the purpose of receiving the order.

Power to
arrest
without
warrant.

4. (1) Any ⁵[servant of the Government] authorized in this behalf by general or special order of the ³[State Government] may arrest without warrant any person against whom a reasonable suspicion exists that he is a person in respect of whom an order might lawfully be made under sub-section (1) of section 2.

(2) Any officer exercising the power conferred by sub-section (1) may, at the time of making the arrest, search any place and seize any property which is, or is reasonably suspected of being, used by such person for the purpose of doing any act, or committing any offence, of the nature described in sub-section (1) of section 2, ⁶[and may require in writing any police officer subordinate to him and not below the rank of a Sub-Inspector or any officer in charge

¹Section 8 was renumbered as sub-section (1) of section 8 and to this section as so renumbered sub-section (2) was added by sec. 15 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

²These words, brackets, letter and figures were inserted by sec. 15(4), *ibid*.

³See foot-note 5 on page 167, *ante*.

⁴These words were substituted for the words “*Official Gazette*” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵See foot-note 2 on page 168, *ante*.

⁶These words and figures were added by sec. 8(1) of the Bengal Criminal Law Amendment Act, 1932 (Ben. Act IV of 1932).

of 1930.]

(Sections 5, 6.)

Act V of
1898.

of a police-section as defined in the Code of Criminal Procedure, 1898, whether in the same or a different district or jurisdiction to search any such place and seize any such property. The officer to whom such requisition is addressed shall thereupon search the place or places specified in the requisition and forward the property found, if any, to the officer at whose request the search was made. The provisions of the Criminal Procedure Code, 1898, so far as they can be made applicable, shall apply to any search made under this sub-section.]

(3) Any officer making an arrest under sub-section (1) shall forthwith report the fact to the ¹[State Government], and may, by order in writing, commit any person so arrested to custody pending receipt of the orders of the ¹[State Government], and the ¹[State Government] may by general or special order specify the custody to which such person shall be committed :

Provided that no person shall be detained in custody under this section for a period exceeding fifteen days save under a special order of the ¹[State Government], and no person shall in any case be detained in custody under this section for a period exceeding ²[two months].

5. (1) The ¹[State Government] and every ²[servant of the Government] to whom any copy of any order made under section 2 has been directed or endorsed by or under the general or special authority of the ¹[State Government] may use any and every means necessary to enforce compliance with such order.

Enforce-
ment of
orders.

(2) Any officer exercising any of the powers conferred by section 4 may use any and every means necessary to the full exercise of such powers.

⁴6. (1) Whoever knowingly and wilfully disobeys any direction in an order made under sub-section (1) of section 2 shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Penalties
for
breaches of
orders
under
sections 2,
2A and 3.

(2) Whoever knowingly and wilfully disobeys any direction in an order made under sub-section (1) of section 2A shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

¹See foot-note 5 on page 167, *ante*.

²These words were substituted for the words "one month" by sec. 8(2) of the Bengal Criminal Law Amendment Act, 1932 (Ben. Act IV of 1932).

³See foot-note 2 on page 168, *ante*.

⁴Sections 6 and 6A were substituted for the original section 6 as amended by the Bengal Criminal Law Amendment Act, 1932 (Ben. Act IV of 1932), by sec. 16 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

(Sections 6A, 7.)

(3) Whoever fails to comply with any direction in a notification published under sub-section (2) of section 3 shall, unless he proves that he had no knowledge of the notification, or that it was not possible for him to comply therewith and that he has taken all reasonable steps to make known to the officer before whom he was directed to appear the place where he may be found and the cause which rendered it not possible for him to comply therewith, be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this section shall be a cognizable and non-bailable offence for which a warrant shall ordinarily issue in the first instance.

Act V of
1898.

Realisa-
tion of
fine from
parent or
guardian.

¹6A. (1) Where a person sentenced to fine under sub-section (2) of section 6 is, in the opinion of the Court, ordinarily resident with his parent or guardian, the Court may order that the fine shall be paid by such parent or guardian as if it had been a fine imposed upon the parent or guardian.

(2) Before making an order under sub-section (1), the Court shall give the parent or guardian an opportunity to appear and be heard, and no such order shall be made if the parent or guardian satisfies the Court that he has not conduced to the commission of the offence by neglecting to control the offender.

(3) Where a parent or guardian is ordered to pay a fine under this section, the amount may be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898.

Explanation.—In this section the word “guardian” includes any person who, in the opinion of the Court, has for the time being the charge of or control over the offender.

Power of
photo-
graphing,
etc.,
persons in
respect of
whom
order has
been made
under
section 2
or section
2A.

7. (1) Every person in respect of whom an order has been made under sub-section (1) of section 2 ^a[or sub-section (1) of section 2A] shall, if so directed by any officer authorized in this behalf by general or special order of the ^a[State Government],—

- (a) permit himself to be photographed ;
- (b) allow his finger impression to be taken ;
- (c) furnish such officer with specimens of his handwriting and signature ;

^a See foot-note 4 on page 171, *ante*.

^a These words and figures were inserted by sec. 17(1) of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

^a See foot-note 5 on page 167, *ante*.

of 1930.]

(Sections 8, 9.)

(d) attend at such times and places as such officer may direct for all or any of the foregoing purposes :

¹Provided that a person in respect of whom an order has been made under sub-section (1) of section 2A shall not be directed to allow his finger impression to be taken.

(2) If any person fails to comply with or attempts to avoid any direction given in accordance with the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Powers of search.

8. The power to issue search warrants conferred by section 98 of the Code of Criminal Procedure, 1898, shall be deemed to include a power to issue warrants authorising the search of any place in which any Magistrate mentioned in that section has reason to believe that any offence specified in the Second Schedule has been, is being, or is about to be committed, and the seizure of anything found therein or thereon which the officer executing the warrant has reason to believe has been, is being, or is intended to be, used for the commission of any such offence ; and the provisions of the said Code, so far as they can be made applicable, shall apply to searches made under the authority of any warrant issued under this section, and to the disposal of any property seized in any such search ; and an order for search issued by the ²[State Government] under sub-section (2) of section 2 shall be deemed to be a search warrant issued by a Presidency Magistrate or the District Magistrate having jurisdiction in the place specified therein, and may be executed by the person to whom the order is addressed in the manner provided in this section.

Act V of 1898.

Scrutiny of case by two Judges.

9. (1) ³[Within one month from the date of an order by the State Government² under sub-section (1) of section 2 or, if such order contains a direction under clause (a) of sub-section (2) of the said section, within one month from the date of the arrest or surrender of the person in respect of whom the order has been made,] the ²[State Government] shall place before two persons, who shall be either Sessions Judges or Additional Sessions Judges having in either case, exercised for at least five years, the powers of a Sessions Judge, or Additional Sessions Judge, the material facts and circumstances in its possession on which the order has been based or which are relevant to the inquiry, together with any such facts and circumstances relating to the case which may have subsequently come into its possession, and a statement of the allegations against the person in respect of whom the order

¹This provision was added by sec. 17(2) of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

²See foot-note 5 on page 167, *ante*.

³These words, brackets, letter and figures were substituted for the original words by sec. 18 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

[Ben. Act VI]

(Sections 10, 10A.)

has been made and his answers to them, if furnished by him. The said Judges shall consider the said material facts and circumstances and the allegations and answers and shall report to the ¹[State Government] whether or not in their opinion there is lawful and sufficient cause for the order.

(2) On receipt of the said report, the ¹[State Government] shall consider the same and shall pass such order thereon as appears to the ¹[State Government] to be just or proper.

(3) Nothing in this section shall entitle any person against whom an order has been made under sub-section (1) of section 2 to attend in person or to appear by pleader in any matter connected with the reference to the said Judges, and the proceedings and report of the said Judges shall be confidential.

Power to
suspend
operation
of orders
under
section 2.

10. (1) When an order under sub-section (1) of section 2 has been made against a person, the ¹[State Government] may at any time, without conditions or upon any conditions which such person accepts, direct the suspension or cancellation of such order.

(2) If any condition on which an order has been suspended or cancelled is in the opinion of the ¹[State Government] not fulfilled, the ¹[State Government] may revoke the suspension or cancellation, and thereupon the person in whose favour such suspension or cancellation was made may, if at large, be arrested by any police officer without warrant, and the order under sub-section (1) of section 2 shall be deemed to be in full force.

(3) If the conditions on which such suspension or cancellation has been made include the execution of a bond with or without sureties, the ¹[State Government] may at once proceed to recover the penalty of such bond.

(4) A Presidency Magistrate or Magistrate of the first class shall in default of payment of such penalty issue, on application made in this behalf by an officer of the ¹[State Government] specially empowered, a warrant for the attachment and sale of the movable property belonging to the defaulter or his estate if he be dead. On the issue of such warrant the provisions of sub-sections (3) and (4) of section 514 of the Code of Criminal Procedure, 1898, shall apply to such recovery.

Act V of
1898.

Power to
suspend
operation
of orders
under
section 2A.

²10A. (1) When an order under sub-section (1) of section 2A has been made against a person, the District Magistrate may at any time, without conditions which such person or the parent or guardian of such person accepts, direct the suspension or cancellation of such order.

¹See foot-note 5 on page 167, ante.

²Section 10A was inserted by sec. 19 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

(Sections 11, 12.)

(2) If any condition on which an order has been suspended or cancelled is in the opinion of the District Magistrate not fulfilled, the District Magistrate may, after giving such person or the parent or guardian of such person, as the case may be, an opportunity to appear and be heard, revoke the suspension or cancellation, and thereupon the order under sub-section (1) of section 2A shall be deemed to be in full force, and if the conditions on which such suspension or cancellation has been made, include the execution of a bond with or without sureties by the parent or guardian of such person, the District Magistrate may at once proceed to recover the penalty of the bond.

(3) In default of payment of such penalty, the District Magistrate may issue a warrant for the attachment and sale of the moveable property belonging to the defaulter or his estate if he be dead. On the issue of such warrant the provisions of sub-sections (3) and (4) of section 514 of the Code of Criminal Procedure, 1898, shall apply to such recovery.

Act V of
1898.

Explanation.—In this section the word “guardian” has the same meaning as in section 2A.

11. (1) The ¹[State Government] shall, by order in writing, appoint such persons as it thinks fit to constitute Visiting Committees for the purposes of this Act, and shall by rules prescribe the functions which these Committees shall exercise.

Visiting
Commit-
tees.

(2) Such rules shall provide for periodical visits to persons under restraint by reason of an order made under sub-section (1) of section 2.

(3) No person in respect of whom any such order has been made requiring him to notify his residence or change of residence or to report himself to the police or to abstain from any specified act, shall be deemed to be under restraint for the purpose of sub-section (2).

²12. The ¹[State Government] shall make to every person, who is placed under restraint by reason of an order made under sub-section (1) of section 2, such monthly allowance in cash or in kind or both for his support, as is, in the opinion of the ¹[State Government], having regard to his other sources of income, adequate for the supply of his wants, ³[and may also make to any members of his family or near relatives who are dependant on him for support such allowance towards their

Allow-
ances to
persons
under res-
traint and
their de-
pendants.

¹ See foot note 5 on page 167, *ante*.

² Section 12 was substituted for the original section 12 by sec. 5 of the Bengal Criminal Law Amendment Act, 1932 (Ben. Act IV of 1932).

³ These words were substituted for the original words by sec. 20 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

(Sections 13—15.)

maintenance as may seem to the State Government¹ appropriate in all the circumstances of the case not exceeding such allowance as, in the opinion of the State Government¹ such person would have been in a position to make if he had been placed under restraint.]

Explanation.—For the purpose of this section a person placed under restraint shall not include a person in respect of whom any order has been made under sub-section (1) of section 2 requiring him to notify his residence or change of residence or to report himself to the police or to abstain from any specific act, other than an act which interferes with his normal trade, business or profession.

Power to
make rules.

13. (1) The ¹[State Government] may make rules providing for the procedure to be followed regarding the notification of residence and report to the police by persons in respect of whom orders have been made under section 2, ²[and for the directions which may be given in an order made under section 2A] and for the place and manner of custody of all persons arrested or committed to or detained in custody under this Act.

Publication
of rules.

(2) Such rules shall be published in the ³[*Official Gazette*], and on such publication shall have effect as if enacted in this Act.

Bar to
suits,
prosecu-
tions and
other legal
proceed-
ings.

14. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Effect of
the Act.

15. Anything done and any action taken under the provisions of the Bengal Criminal Law Amendment Ordinance, 1930, shall be deemed to have been done or taken under the provisions of this Act as if this Act had commenced on the nineteenth day of April, 1930, ⁴[and anything done and any action taken under the provisions of the Bengal Criminal Law Amendment Ordinance, 1931, shall be deemed to have been done or taken under the provisions of this Act as amended by the Bengal Criminal Law Amendment Act, 1932, as if this last Act had commenced on the twenty-ninth day of October, 1931.]

Ord. I of
1930.

Ord. IX of
1931.

Ben. Act
IV of 1932.

¹See foot-note 5 on page 167, *ante*.

²These words, figure and letter were inserted by sec. 21 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

³See foot-note 4 on page 170, *ante*.

⁴These words and figures were added by sec. 6 of the Bengal Criminal Law Amendment Act, 1932 (Ben. Act IV of 1932).

(The First and Second Schedules.)

The First Schedule.

(See section 2.)

Act XLV
of 1860.

(1) Any offence punishable under any of the following sections of the Indian Penal Code, namely, sections ¹[121, 121A, 122, 123, 148, 216], 302, 304, 326, 327, 329, 332, 333, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 457 and 506.

VI of 1908.

²(2) Any offence under the Explosive Substances Act, 1908.

XI of 1878.

²(3) Any offence under the Indian Arms Act, 1878.

³(4) Any attempt or conspiracy to commit, or any abetment of, any of the above offences.

The Second Schedule.

(See section 8.)

(a) Any offence punishable under any of the following sections of the Indian Penal Code, namely, sections ¹[121, 121A, 122, 123, 148, 216], 302, 304, 326, 327, 329, 332, 333, 385, 386, 387, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459, 460 and 506.

(b) Any offence under the Explosive Substances Act, 1908.

(c) Any offence under the Indian Arms Act, 1878.

(d) Any attempt or conspiracy to commit, or any abetment of, any of the above offences.

¹These figures and letter were substituted for the figures "148" by secs. 7(a) and 8 of the Bengal Criminal Law Amendment Act, 1932 (Ben. Act IV of 1932).

²Paragraphs (2) and (3) were inserted by sec. 7(b), *ibid.*

³The original paragraph (2) was renumbered as paragraph (4) by sec. 7(c), *ibid.*

Bengal Act VII of 1930
THE BENGAL (RURAL) PRIMARY EDUCATION ACT, 1930.
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THE BENGAL (RURAL) PRIMARY EDUCATION

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{ The Government of India (Adaptation of
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Bengal and Punjab Acts) Order, 1948.
The Adaptation of Laws Order, 1950.

[22nd January, 1931.]

An Act to provide for the extension of primary education in rural areas in Bengal.

WHEREAS it is expedient to make better provision for the progressive expansion and for the management and control of primary education in rural areas in Bengal, so as to make it available to all children and with a view to make it compulsory within ten years ;

5 & 6 Geo.
V, c. 61 ; 6
& 7 Geo. V,
c. 87 ; 9 &
10 Geo. V,
c. 101,

AND WHEREAS the previous sanction of the Governor General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act ;

It is hereby enacted as follows :—

CHAPTER I.

Preliminary.

1. (1) This Act may be called the Bengal (Rural) Primary Education Act, 1930.

Short title,
local
extent and
com-
mence-
ment.

¹On the establishment of *Zilla Parishad* in any district this Act shall stand amended within the territorial limits of the said district as follows, namely :—

1. For the words "District Board, wherever they occur, the words "*Zilla Parishad*" shall be substituted.

2. Section 20 shall be omitted. (*Vide* sec. 118 read with the Second Schedule of the West Bengal *Zilla Parishads* Act, 1968 (West Ben. Act XXXV of 1968).

²This Act should be read with sec. 4 and Schedule I of the West Bengal *Panchayat* Act, 1957 (West Ben. Act I of 1957).

In terms of the provisions of sub-section (3) of section 8 read with Schedule III of the West Bengal Transferred Territories (Assimilation of Laws) Act, 1958 (West Ben. Act XIX of 1958), this Act shall not extend to, or come into force in, the territories Transferred from the State of Bihar to the State of West Bengal by sec. 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956 (XL of 1956).

³For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1930, Part IV, page 90, and for proceedings in Council, see the Proceedings of the Bengal Legislative Council, Volume XXXV, pages 206, 286, 759 and 847.

(Chapter I,—Preliminary.—Section 1.)

(2) It extends¹ to the whole of ²[West Bengal], except the town of Calcutta and any area which has been or may hereafter be constituted a municipality under the provisions of the Bengal Municipal Act, ³[1932].

Ben. Act
XV of
1982.

⁴(3) It shall come into force, in whole or in part, in such

¹The Act was also extended to Cooch Behar by sec. 2(1) of, and the Schedule to, the West Bengal State Laws (Extension to Cooch Behar) Act, 1950 (West Ben. Act XXX of 1950).

This Act was applied to the district of Cooch Behar with certain modifications under sec. 6 of the West Bengal State Laws (Extension to Cooch Behar) Act, 1950 (West Ben. Act XXX of 1950—

(a) in the matter of establishing a District School Board for the district of Cooch Behar, *vide* notification no 8467 Edn./9B-10/59, dated 4. 8. 59, published in the *Calcutta Gazette, Extraordinary* of 1959, Part I, pages 1661-1662, as amended by notification No. 8439 Edn. (G)/9B-10/59, dated 29. 8. 60, published in the *Calcutta Gazette, Extraordinary* of 1960, Part I, page 2249.

(b) in the matter of levy and realisation of primary education cess in the district of Cooch Behar, *vide* notification No. 8468 Edn./9B-10/59, dated 4. 8. 59, published in the *Calcutta Gazette, Extraordinary* of 1959, Part I, pages 1662-1663.

²These words were substituted for the word "Bengal" by Article 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³These figures were substituted for the figures "1884" by sec. 2 of, and the First Schedule to, the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

⁴(1) Section 2, sections 6 to 22, Chapter XII and Chapter XIII of this Act came into force,—

(a) in the districts of Dinajpur and Birbhum with effect from the 1st September, 1933, *vide* notification No. 2573 Edn., dated the 29th August, 1933, published in the *Calcutta Gazette*, dated the 31st August, 1933, Part I, page 1224.

(b) in the districts of Nadia and Murshidabad with effect from the 15th November, 1934, *vide* notifications No. 2792Edn., and No. 2798Edn., dated the 10th November, 1934, published in the *Calcutta Gazette*, dated the 15th November, 1934, Part I, page 1762.

(2) Section 2, sections 6 to 22, section 28 [except clause (g)], sections 24 to 28, sub-section (1), clauses (i), (ii), (iii) (vi), (vii), (viii), (ix) and (x) and sub-section (2) of section 37, sections 38 (except clauses "secondly" and "thirdly"), 39 and 40 and Chapters VII, VIII, IX, X, XI, XII, XIII and XIV of this Act came into force in the district of Jalpaiguri with effect from the 1st May, 1936, *vide* notification No. 157T.—Edn., dated the 28th April, 1936, published in the *Calcutta Gazette*, dated the 7th May, 1936, Part I, page 1048.

(3) Section 2, sections 6 to 35 and sections 37 to 67 of this Act came into force,—

(a) in the district of Howrah, with effect from the 1st April, 1939, *vide* notification No. 6883Edn., dated the 14th December, 1938, published in the *Calcutta Gazette*, dated the 22nd December, 1938, Part I, page 2776,

(b) in the district of 24-Parganas, with effect from the 15th July, 1939, *vide* notification No. 1808Edn., dated the 7th July, 1939, published in the *Calcutta Gazette*, dated the 13th July, 1939, Part I, page 1660,

(c) in the district of Malda with effect from the 12th October, 1944, *vide* notification No. 1575C./Edn., dated the 5th October, 1944, published in the *Calcutta Gazette*, dated the 22th October, 1944, Part I, page 1244.

(d) in the districts of Hooghly and Bankura with effect from the 28th June, 1945, *vide* notifications No. 1019C./Edn., and No. 102CC./Edn., dated the 18th June, 1945, published in the *Calcutta Gazette*, dated the 28th June, 1945, Part I, page 1100.

[Further foot-notes relating to coming into force of the Act have been carried over to next page.]

of 1930.]

(Chapter I.—Preliminary.—Section 1.)

districts or parts of districts on such dates as the ¹[State Government] may, by notification, direct and for this purpose different

[Continuation of foot-notes relating to coming into force of the Act from page 184, *ante*.]

- (e) in the district of Burdwan, with effect from the 16th August, 1945, *vide* notification No. 429Edn., dated the 11th August, 1945, published in the *Calcutta Gazette*, dated the 16th August, 1945, Part I, page 1860.
- (f) in the district of Midnapore, *vide* notification No. 8348Edn., dated 3rd September, 1948, published in the *Calcutta Gazette, Extraordinary* of 1948, Part I, page 758.
- (g) in the district of Darjeeling, *vide* notification No. 1615Edn., dated 12.4.49, published in the *Calcutta Gazette, Extraordinary* of 1949, Part I, pages 385-386.
- (h) in the district of Cooch Behar with effect from the 1.8.60, *vide* notification No. 518Edn. (G)/9B—10/59, dated 15-2-60, published in the *Calcutta Gazette, Extraordinary* of 1960, Part I, page 369.
- (4) Sections 3, 4 and 5 came into force in the districts of Birbhum, Dinajpur, Nadia, Murshidabad, 24-Parganas, Howrah, Jalpaiguri, Malda, Hooghly, Bankura and Burdwan with effect from the 7th November, 1946, *vide* notification No. 2421Edn., dated 18-10-46, published in the *Calcutta Gazette* of 1946, Part I, page 1496.
- (5) Clause (g) of sub-section (1) of section 23, sections 29 to 35, clauses (iv) and (v) of sub-section (1) of section 37 and clauses "secondly" and "thirdly" of section 38 of this Act came into force,—
 - (a) in the district of Jalpaiguri, with effect from the 1st April, 1939, *vide* notification No. 129Edn., dated 17-1-39, published in the *Calcutta Gazette* of 1939, Part I, page 207.
 - (b) in the district of Birbhum, with effect from the 14th April, 1945, *vide* notification No. 1865C/Edn., dated the 18th December, 1944, published in the *Calcutta Gazette*, dated the 28th December, 1944, Part I, page 1543.
- (6) Section 23 [except clause (g)], sections 24 to 28, sub-section (1), clauses (i) to (iii) and (vi) to (x) and sub-section (2) of section 37, sections 38 (except clauses "secondly" and "thirdly", 39 and 40 and Chapters VII to XI and XIV came into force.—
 - (a) in the districts of Dinajpur and Birbhum, with effect from the 1st April 1934, *vide* notification No. 66Edn., dated 26-2-34, published in the *Calcutta Gazette* of 1934, Part I, page 400.
 - (b) in the district of Murshidabad, with effect from the 1-3-35, *vide* notification No. 2979Edn., dated 28-11-34, published in the *Calcutta Gazette* of 1934, Part I, page 1893.
 - (c) in the district of Nadia, with effect from the 1st March, 1935, *vide* notification No. 2988 Edn., dated 28.11.38, published in the *Calcutta Gazette* of 1934, Part I, page 1893.
- (7) Clause (g) of sub-section (1) of section 23 came into force in the districts of Dinajpur, Nadia and Murshidabad with effect from the 1st October, 1938, *vide* notification No. 5224 Edn., dated 7.9.38, published in the *Calcutta Gazette* of 1938, Part I, page 1976.
- (8) Sections 29 to 35, clauses (iv) and (v) of sub-section (1) of section 37, and clauses "secondly" and "thirdly" of section 38 came into force,—
 - (a) in the district of Dinajpur, *vide* notification No. 1825 Edn., dated 14.4.38, published in the *Calcutta Gazette* of 1938, Part I, page 805.
 - (b) in the district of Nadia, with effect from the 14.4.38, *vide* notification No. 1844 Edn., dated 14.4.38, published in the *Calcutta Gazette* of 1938, Part I, page 805.
 - (c) in the district of Murshidabad, with effect from the 14.4.38, *vide* notification No. 1871, dated 14.4.38, published in the *Calcutta Gazette* of 1938, Part I, page 805.

¹The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937 and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act. VII

(Chapter I.—Preliminary.—Section 2.)

dates may be appointed for different provisions of this Act and for different districts, or parts of districts.

Explanation.—The words “the town of Calcutta” mean, subject to the inclusion of any local area by notification under section 543 of the Calcutta Municipal Act, 1923,¹ and subject to the provisions of section 147 of the Calcutta Improvement Act, 1911, the area described in Schedule I to the Calcutta Municipal Act, 1923¹ :

Ben. Act
III of 1928
Ben. Act V
of 1911.

Provided that this Act shall not come into force in any cantonment * * * * *

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

^a(a1) “*Anchal Panchayat*” means an *Anchal Panchayat* constituted under the West Bengal Panchayat Act, 1957 ;

West Ben.
Act I of
1957.

(1) “attendance” at a school means presence for instruction at a primary school for so many and on such days in the year and at such time or times on each day of attendance as may be required by the prescribed educational authority after consulting the Attendance Committee ;

(2) “Board” means a District School Board constituted under this Act ;

2. In section 2 of the Bengal (Rural) Primary Education Act, 1930, for clause (5), the following clause shall be substituted :—

(5) “Director of Public Instruction” means the officer designated by this name by the State Government for the purposes of this Act and includes, for such purposes as may be specified by the State Government by notification in this behalf, the officer designated as the Director of Primary Education ;

ion 4 of the

Ben. Act
IX of 1880

under the Bengal Local Self-Government Act, of 1885 ;

(8) “District Inspector of Schools” means the local executive educational officer in charge of primary education in each district responsible to the Director of Public Instruction ;

Ben. Act
III of 1881

¹The Calcutta Municipal Act, 1923 (Ben. Act III of 1928) was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951). This reference should now be construed as a reference to the corresponding provision of the latter Act.

^aThe words “without the previous sanction of the Governor General in Council” were omitted by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

^bClause (a1) was inserted by sec. 4 of, and Sch. I to, the West Bengal Panchayat Act, 1957 (West Ben. Act I of 1957), as amended by sec. 15(b) of the West Bengal Panchayat (Amendment) Act, 1959 (West Ben. Act XV of 1959). Note.—In this connection the provisions of sections 3 and 4 of the West Bengal Panchayat Act, 1957 may be seen.

^cSee foot-note 1 on page 185, ante.

of 1930.]

(Chapter I.—Preliminary.—Section 2.)

(9) “financial year” means a year beginning on the first day of April ;

West Ben.
Act I of
1957.

¹(9a) “*Gram Panchayat*” means a *Gram Panchayat* constituted under the *West Bengal Panchayat Act, 1957* ;

(10) “guardian” means any person to whom the care, nurture or custody of any child falls by law or by natural right or recognised usage, or who has accepted or assumed the care, nurture or custody of any child or to whom the care or custody of any child has been entrusted by any lawful authority ;

(11) “notification” means a notification published in the ²[*Official Gazette*] ;

Ben. Act
VI of 1870.

(12) “*Panchayat*” means a *Panchayat* appointed under the *Village Chaukidari Act, 1870* ;

(13) “prescribed” means prescribed by rules made under this Act ;

(14) “primary education” means education in such subject and up to such standards as may be prescribed ;

(15) “primary school” means a school or department of a school giving instruction in primary education either managed by the Board or recognised as a primary school under section 54 ;

(16) “public management” in relation to a primary school means management by the Government, or by a District School Board either directly or through its power of delegation to a Union Board, a Union Committee ³[, a *Panchayat*, a *Gram Panchayat* or an *Anchal Panchayat*] ; all other management shall be deemed to be “private management” ;

Act V of
1898.

(17) “subdivision” has the same meaning as in the Code of Criminal Procedure, 1898 ;

Ben. Act V
of 1919.

(18) “Union Board” means a Union Board constituted under the *Bengal Village Self-Government Act, 1919* ;

(19) “Union Committee” means a Union Committee constituted under the *Bengal Local Self-Government Act of 1885*.

Ben. Act
III of
1885.

¹Clause (9a) was inserted by sec. 4 of, and Sch. I to, the *West Bengal Panchayat Act, 1957* (West Ben. Act I of 1957), as amended by sec 15(b) of the *West Bengal Panchayat (Amendment) Act, 1959* (West Ben. Act XV of 1959). See also the “Note” to foot-note 3, on page 186 *ante*.

²These words were substituted for the words “*Calcutta Gazette*” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1987.

³These words were substituted for the words “or a *Panchayat*” by sec. 4 of, and Sch. I to, the *West Bengal Panchayat Act, 1957* (West Ben. Act I of 1957), as amended by sec 15(b) of the *West Bengal Panchayat (Amendment) Act, 1959* (West Ben. Act XV of 1959). See also the “Note” to foot-note 3 on page 186, *ante*.

(Chapter II.—The Central Primary Education Committee.—
Sections 3, 4.)

CHAPTER II.

The Central Primary Education Committee.

Establish-
ment of
the Central
Primary
Education
Committee.

Constitu-
tion of
the Com-
mittee.

3. A Committee, to be called the Central Primary Education Committee, shall be constituted in the manner hereinafter provided, for the purpose of advising the ¹[State Government] on all matters which may be or are to be referred to it under this Act.

4. (1) The Committee shall be constituted for five years at a time and shall consist of the following members, namely :—

(a) the Director of Public Instruction, ²[West Bengal], *ex-officio* ;

(b) ³[four] members of whom two shall be elected in the prescribed manner from each of the ⁴[two] divisions of the ⁵[State] by the members of the District School Boards of each division, * * * * ;

(c) ⁷[seven] members to be appointed by the ¹[State Government], of whom ⁸[two] shall be women interested in education and] two shall be representatives of the depressed classes.

(2) If by such date as the ¹[State Government] may fix, any of the electoral bodies referred to in clause (b) of sub-section (1) fails to elect a person to be a member of the Committee, the ¹[State Government] shall appoint a suitable person in his place and any person so appointed shall be deemed to be a member as if he had been duly elected by such body.

⁹(3) The Director of Public Instruction, ²[West Bengal] shall be *ex-officio* Chairman of the Committee, and there shall be a Secretary of the Committee who shall for the first term of five

¹See foot-note 1 on page 185, *ante*.

²See foot-note 5 on page 188, *ante*.

³This word was substituted for the word "ten" by Article 3(1) of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴This word was substituted for the word "five", *ibid*.

⁵The word "State" was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁶The words "one to be a Muhammadan and the other a Hindu" were omitted by Article 3(1) of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁷This word was substituted for the word "five" by sec. 2(1)(a) of the Bengal (Rural) Primary Education (Amendment) Act, 1943 (Ben. Act IV of 1943).

⁸These words were inserted by sec. 2(1)(b) of the Bengal (Rural) Primary Education (Amendment) Act, 1943 (Ben. Act IV of 1943).

⁹Sub-section (3) was added by sec. 2(2), *ibid*.

of 1930.]

(Chapter II.—The Central Primary Education Committee.—
Section 5.—Chapter III.—The District School Board.—Section 6.)

years be appointed by the ¹[State] Government from amongst the elected members of the Committee and who shall thereafter be elected in the prescribed manner by the members of the Committee from amongst themselves.

5. The ²[State Government] may refer any matter to the Committee for its opinion, and shall consult the Committee before making an order under section 21, section 22, or section 51, or a notification under section 56, or a rule under section 66.

Functions
of the Com-
mittee.

CHAPTER III.

The District School Board.

6. When this section comes into force in any district the ³[State Government] shall establish for such district a District School Board consisting of the following members, namely ;—

Constitu-
tion of
the Board.

(a) the District Magistrate, *ex-officio* :

Provided that, on the expiration of two terms of four years mentioned in sub-section (2) of section 10 after the first establishment of the Board, the District Magistrate shall cease to be an *ex-officio* member of the Board ;

(b) the Subdivisional Magistrates, *ex-officio* ;

(c) The District Inspector of Schools, *ex-officio* ;

(d) the Chairmen of the Local Boards, *ex-officio* ;

(e) the Chairman and the Vice-Chairman of the District Board, *ex-officio* ;

(f) as many members as there are subdivisions in the district to be elected in the prescribed manner by the members of the District Board :

Provided that the number shall in no case be less than two ;

(g) one member for each subdivision to be elected in the prescribed manner by the members of the Union Boards, Union Committees ⁴[, *Panchayats* and *Anchal Panchayats* within the subdivision] :

Provided that the number shall in no case be less than two ;

(h) as many members as there are subdivisions in the district to be appointed by the ⁵[State Government] :

Provided that the number shall in no case be less than two ; ^{4*}

¹The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²See foot-note 1 on page 185, *ante*.

³These words were substituted for the words "and *Panchayats*" by sec. 4 of, and the Schedule I to, the West Bengal *Panchayat* Act, 1957 (West Ben. Act I of 1957), as amended by sec. 15(b) of the West Bengal *Panchayat* (Amendment) Act, 1959 (West Ben. Act XV of 1959). See also the "Note" to foot-note 8 on page 186, *ante*.

⁴The word "and" was omitted by sec. 3(1) of the Bengal (Rural) Primary Education (Amendment) Act, 1948 (Ben. Act IV of 1948).

(Chapter III.—The District School Board—Sections 6A, 7.)

¹(hh) in addition to the members referred to in clause (h), two members who shall belong to the Schedule Castes to be appointed by the ²[State] Government ; and

(i) one teacher of a primary school to be appointed by the ³[State Government] for the first term of four years referred to in sub-section (2) of section 10 and thereafter to be elected in the prescribed manner by the teachers of primary schools ⁴[possessing the prescribed qualifications].

⁵[Provided that no person shall be eligible for election under this clause who is not entitled to vote at such election.]

Modifica-
tion of sec-
tion 6 for
districts in
which
Local
Boards do
not exist.

⁶6A. In any district in which Local Boards do not exist, clause (d) of section 6 shall be deemed to be omitted, and in clause (g) of that section for the words "one member" the words "two members", and in the proviso to the said clause for the word "two" the word "three", shall be deemed to be substituted.

Procedure
in default
of election
of mem-
bers.

7. If, by such date as may be fixed by the ²[State Government]—

(i) the members of the District Board do not elect the members referred to in clause (f) of section 6,

(ii) the members of Union Boards, Union Committees ⁷[, *Panchayat* and *Anchal Panchayats*] do not elect the members referred to in clause (g) of section 6,

(iii) the teachers of primary schools do not elect the member referred to in clause (i) of section 6, after the expiration of first term of four years mentioned in sub-section (2) of section 10 after the first establishment of the Board.

the ⁸[State Government] shall appoint suitable persons to be such members, and any persons so appointed shall be deemed to be members as if they had been duly elected by the members of the District Board or of Union Boards, Union Committees ⁷[, *Panchayats* and *Anchal Panchayats*], or by the teachers of primary schools, as the case may be.

¹Clause (hh) was inserted by sec. 3(2) of the Bengal (Rural) Primary Education (Amendment) Act, 1943 (Ben. Act IV of 1943).

²See foot-note 1 on page 189, *ante*.

³See foot-note 1 on page 185, *ante*.

⁴These words were added by sec. 3(3)(a) of the Bengal (Rural) Primary Education (Amendment) Act, 1943 (Ben. Act IV of 1943).

⁵This proviso was added by sec. 3(3)(b), *ibid*.

⁶Section 6A was inserted by sec. 4, *ibid*.

⁷These words were substituted for the words "and *Panchayats*" by sec. 4 of, and Schedule I to, the West Bengal *Panchayat* Act, 1957 (West Ben. Act I of 1957), as amended by sec. 15(b) of the West Bengal *Panchayat* (Amendment) Act, 1959 (West Ben. Act XV of 1959). See also the "note" to foot-note 3 on page 186, *ante*.

of 1930.]

(Chapter III.—The District School Board.—Sections 7A—11.)

17A. A teacher of a primary school, who is appointed or elected as a member of the Board, shall cease to be a member of the Board with effect from the date on which he ceases to be a teacher of a primary school.

Vacation of seat by a teacher member on ceasing to be a teacher.

8. (1) There shall be a President of the Board, who shall, until the expiration of two terms of four years mentioned in sub-section (2) of section 10 after the first establishment of the Board, be a member of the Board appointed in that behalf by the ²[State Government], and shall thereafter be a member of the Board elected in that behalf by the Board in the prescribed manner and approved by the ³[State Government] :

President and Vice-President.

³[Provided that a President elected by a Board may, after his election, perform the duties of his office while the question of such approval is pending.]

(2) The Board may from time to time elect, for such period as it thinks fit, one of its members to be Vice-President.

9. The names of the President, the Vice-President and of the appointed and elected members of the Board or, where the President has been appointed *ex-officio* or a member is an *ex-officio* member, the office by virtue of which he has been appointed President or is a member, shall be published by the ²[State Government] in the ⁴[Official Gazette].

Elections and appointments to be notified in Official Gazette.

10. (1) The Vice-President and any other appointed or elected member may resign his office by giving notice in writing to the President, and, on such resignation being accepted by the President, shall be deemed to have vacated his office.

Term of office.

(2) Subject to the provisions of this chapter, the appointed or elected members shall hold office for a term of four years, and may, on the expiration of such term, be re-appointed or re-elected.

(3) Notwithstanding the expiration of the term of four years mentioned in sub-section (2) an appointed or elected member shall continue to hold office until the vacancy caused by the expiration of the said term has been filled.

11. (1) The ²[State Government] may, by notification, remove a President, Vice-President, or member of the Board if he—

Removal of members.

(a) refuses to act or becomes incapable of acting as a member of the Board.

(b) is declared insolvent ;

¹Section 7A was inserted by section 5 of the Bengal (Rural) Primary Education (Amendment) Act, 1948 (Ben. Act IV of 1948).

²See foot-note 1 on page 185, *ante*.

³This proviso was added by sec. 6 of the Bengal (Rural) Primary Education (Amendment) Act, 1948 (Ben. Act IV of 1948).

⁴See foot-note 2 on page 187 *ante*.

(Chapter III.—The District School Board.—Sections 12—15.)

(c) has been or is convicted of any such offence or has been or is subjected by a criminal court to any such order as in the opinion of the ¹[State Government] implies a defect of character which unfits him to become or to continue to be a President, Vice-President or member of the Board ; or

(d) without excuse sufficient in the opinion of the ¹[State Government], is absent without the consent of the Board from more than six consecutive meetings of the Board.

(2) The ¹[State Government] may fix a period during which any person so removed shall not be eligible for re-appointment or re-election.

Casual
vacancies.

12. When the place of an appointed or elected member of the Board becomes vacant ²[under section 7A or] by his removal, resignation or death, a new member shall be appointed or elected in the manner provided in section 6, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred :

Provided that no act of the Board, or of its officers, shall be deemed to be invalid by reason only that the number of members of the Board at the time of the performance of such act, was less than the number provided by section 6.

Travelling
allowance.

13. Members (other than *ex-officio* members who are ³[servants of the Government]) and the establishment of a Board shall be entitled to travelling allowance of the prescribed amount to be paid in the prescribed manner from the District Primary Education Fund for expenses incurred by them in attending meetings of the Board or in performing any duty assigned to them by the Board for the purposes of this Act.

Board to
be a body
corporate.

14. Every Board shall be a body corporate by the name of "the District School Board of (name of district)," shall have perpetual succession and a common seal and shall by the said name sue and be sued, with power to acquire and hold property, both movable and immovable, and, subject to the prescribed conditions, to transfer any property held by it and to contract and do all other things necessary for the purposes of this Act.

President
at
meetings.

15. (1) The President, or, in his absence, the Vice-President, shall preside at every meeting of the Board, and shall have a second or casting vote in all cases of equality of votes.

¹ See foot-note 1 on page 185, *ante*.

² These words, figure and letter were inserted by sec. 7 of the Bengal (Rural) Primary Education (Amendment) Act, 1943 (Ben. Act IV of 1943).

³ The words "servants of the Crown" were originally substituted for the words "Government officers" by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Chapter III.—The District School Board.—Sections 16—19.)

(2) In the absence of both the President and Vice-President, the members present at any meeting shall elect one of their number to preside, who shall have a second or casting vote in all cases of equality of votes.

16. All meetings of the Board shall be open to the public :

Meetings
of Board
to be
public.

Provided that the person presiding may in any particular case, for reasons to be recorded in writing, direct that the public generally or any particular person shall withdraw.

17. No member of the Board shall vote on any question coming before the Board for consideration in which (otherwise than in its general application to all persons and properties within the district) he has a pecuniary interest.

Interested
members
not to
vote.

18. (1) All orders of the Board shall be carried into effect by the President in whom the entire executive power of the Board shall be vested and who shall be responsible for giving effect to such orders.

Duties of
President
and Vice-
President.

(2) The President shall not exercise any power which by this Act is expressly declared to be exercisable by the Board.

(3) The President may authorise the Vice-President by an order in writing to exercise any of the powers conferred or to perform any of the duties imposed on the President by this Act and thereupon the responsibility of the President in respect of such powers and duties shall devolve upon the Vice-President during the continuance of such order.

(4) When the office of President is vacant the Vice-President shall exercise the functions of the President until a new President is appointed.

19. (1) Every Board may make regulations in regard to the following matters, namely :—

Power of
Board to
make regu-
lations.

- (i) the time and place of its meetings ;
- (ii) the manner in which notice of meetings shall be given ;
- (iii) the conduct of proceedings at meetings ;
- (iv) the division of duties among the members of the Board ;
- (v) the appointment, duties and procedure of special committees consisting wholly of members of the Board or partly of such members and partly of residents within the local jurisdiction of the Board ;
- (vi) the persons by whom receipts may be granted for money paid to the Board ;
- (vii) the inspection by members of the Board of primary schools situated within its jurisdiction and the inspection of accounts, books, registers, returns, reports, and other documents, appertaining to such schools ; and
- (viii) the carrying out of the purposes of this Act.

(Chapter III.—The District School Board.—Sections 20—22.)

(2) Any regulation made under sub-section (1) which is repugnant to the provisions of any rule made under section 66 shall, to the extent of such repugnancy, but not otherwise, be void.

Control by
Commissioner.

¹20. The Commissioner of the Division may, by order in writing, suspend the execution of any resolution or order of a Board situate within his jurisdiction and prohibit the doing or completion of any act which is about to be done, or is being done within such jurisdiction in pursuance of or under cover of this Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law.

Control by
State
Government.

21. (1) If at any time it appears to the ²[State Government] that a Board or its President has made default in performing any duty imposed by or under this Act, the ²[State Government] may, by an order in writing, fix a period for the performance of such duty.

(2) If the duty is not performed within the period so fixed the ²[State Government] may appoint a person to perform it, and may direct that the expense of performing it shall be paid, within such time as it may fix, to such person by the Board.

(3) If the expense is not so paid, the ²[State Government] may make an order directing the person having the custody of the District Primary Education Fund to pay to the person appointed under sub-section (2) such expense in priority to any other charges against such fund, and he shall, so far as the funds to the credit of the Board admit, comply with the order of the ²[State Government].

Super-
session of
Board.

22. (1) If at any time it appears to the ²[State Government] that a Board is not competent to perform or persistently makes default in the performance of, the duties imposed upon it by or under this or any other Act, or exceeds or abuses its powers, the ²[State Government] may, by an order in writing, specifying the reasons for so doing, remove all appointed and elected members of such Board and direct that the vacancies shall thereupon be filled by election in respect of elected members and by appointment in respect of appointed members or that all the vacancies shall be filled by appointment.

(2) From the date of an order under sub-section (1) until the vacancies are filled—

(a) all powers and duties of the Board shall be exercised and performed by, and

(b) all property vested in the Board shall vest in, such person, in such manner, as the ²[State Government] may direct.

¹ See foot-note 1 on page 188, *ante*.

² See foot-note 1 on page 185, *ante*.

of 1930.]

(Chapter III.—The District School Board.—Section 23.)

23. (I) It shall be the duty of every Board—

Duties of
Boards.

- (a) to prepare and maintain a register showing all primary schools within the district, together with the teachers thereof and their qualifications and the accommodation available therein ;
- (b) to tabulate such further information and to prepare such plans or maps as may be necessary to enable the Board to frame an estimate of the existing provision for primary education and of the further provision necessary to place primary education within the reach of all children ;
- (c) to prepare in the prescribed manner schemes for the extension of primary education, within the area under the authority of each Union Board, Union Committee¹ [Panchayat or Gram Panchayat] ;
- (d) to arrange, in the prescribed manner, for the opening of additional primary schools and the expansion of existing primary schools with a view to giving effect as funds permit to such schemes ;
- (e) to maintain all primary schools under public management in the district, except primary schools maintained by Union Boards under the control of the Board ;
- (f) to construct, repair and manage, either directly or through its powers of delegation to Union Boards, Union Committees² [Panchayats, Gram Panchayats and Anchal Panchayats], all primary schools under public management in the district ;
- (g) subject to the prescribed conditions, to appoint and fix and pay the salaries³ [and allowances] to teachers in primary schools ;
- (h) to grant recognition to schools in accordance with the provisions of section 54 or to withdraw recognition therefrom ;
- (i) to make grants in the prescribed manner for scholarships and stipends for primary schools ;
- (j) to consider and pass orders on all applications under section 55 for grants to primary schools under private management ;
- (k) to make grants to primary schools under private management ;

¹These words were substituted for the words "or Panchayat" by sec. 4 of, and Sch. I to, the West Bengal Panchayat Act, 1957 (West Ben. Act I of 1957), as amended by sec. 15(b) of the West Bengal Panchayat (Amendment) Act, 1959 (West Ben. Act XV of 1959). See also the "Note" to foot-note 3 on page 186, *ante*.

²These words were substituted for the words "and Panchayat", *ibid*. See also the "Note" to foot-note 3 on page 186, *ante*.

³These words were inserted by sec. 2 of the Bengal (Rural) Primary Education (Amendment) Act, 1958 (West Ben. Act XV of 1958).

(Chapter III.—The District School Board.—Sections 24—26.)

- (l) to prepare and transmit to the Director of Public Instruction proposals for increasing the supply of trained and certified teachers ;
- (m) to advise upon all matters relating to primary education referred to the Board by the Director of Public Instruction ;
- (n) subject to the prescribed conditions—
 - (i) to grant pensions and gratuities to,
 - (ii) to form and manage a provident or annuity fund for,
 - (iii) to compel contributions to such fund from, and
 - (iv) to supplement the contributions to such fund of,
 the establishment of the Board and teachers in primary schools.

(2) The register referred to in clause (a) of sub-section (1) shall be maintained and the information referred to in clause (b) thereof shall be tabulated separately for each area under the authority of a Union Board, Union Committee ¹[*Panchayat* or *Gram Panchayat*].

Reports to
be made by
Board.

24. Every Board shall in each financial year—

- (i) frame and transmit to the Director of Public Instruction, by such date and in such form as he may direct, a statement showing for its district—
 - (a) the names of primary schools under private management for which grants have been sanctioned for that year ; and
 - (b) the amount of the grant which has been sanctioned for each such school ;
- (ii) furnish a report to the Director of Public Instruction by such date and in such form as he may direct, exhibiting the grants which it has distributed to schools within the district.

Board to
furnish
other
prescribed
reports.

25. Every Board shall prepare and transmit to the Director of Public Instruction such further reports and statements as may be prescribed.

Power of
Board to
appoint,
punish and
dismiss its
officers and
servants.

26. (1) Subject to the prescribed conditions, a Board may appoint such staff of officers and servants other than inspectors as it may consider necessary to carry out its duties under this Act, and may fix and pay salaries ²[and allowances] to such staff.

(2) Subject to the prescribed conditions, a Board may punish or dismiss members of its staff.

¹These words were substituted for the words “or *Panchayat*” by sec. 4 of, and Sch. I to, the West Bengal *Panchayat* Act, 1957 (West Ben. Act I of 1957), as amended by sec. 15(b) of the West Bengal *Panchayat* (Amendment) Act, 1959 (West Ben. Act XV of 1959). See also the “Note” to foot-note 3 on page 186, *ante*.

²These words were inserted by sec. 2. of the Bengal (Rural) Primary Education (Amendment) Act, 1958 (West Ben. Act XV of 1958).

of 1930.]

(Chapter III.—*The District School Board.*—Sections 27, 28.—

Chapter IV.—*Cess and Tax for Primary Education.*—
Sections 29, 30).

of 1894.

27. The ¹[State Government] may, at the request of the President of the Board, acquire, under the provisions of the Land Acquisition Act, 1894, any land required for the purposes of this Act.

Compul-
sory acqui-
sition of
land for the
purposes of
this Act.

“Land” in this section has the same meaning as in clause (a) of section 3 of the Land Acquisition Act, 1894.

28. All buildings or other property, movable or immovable in a district vested in or held by or under the control of a District Board at the date of the commencement of this Act for the purposes of primary education shall for the purposes of this Act, vest in or be held by or be under the control of the District School Board in that district :

Existing
buildings,
etc., for
primary
education
to vest in
District
School
Boards.

Provided that in the event of a dispute arising whether any building or other property is so vested in or held by or under the control of a District Board at the date of the commencement of this Act, the question shall be referred to the ¹[State Government] whose decision thereon shall be final.

CHAPTER IV.

Cess and Tax for Primary Education.

Ben. Act
IX of 1880.

29. (1) In any district or part of a district in which the provisions of this Chapter are in force, all immovable property on which the road and public works cesses are assessed according to the provisions of the Cess Act, 1880, shall be liable to the payment of a primary education cess.

Levy of
primary
education

(2) The primary education cess shall be levied at the rate of three and a half pice on each rupee of annual net profits from mines and quarries and at the rate of five pice on each rupee of annual value of land and of annual net profits from tramways, railways and other immovable property as determined under the Cess Act, 1880.

30. (1) Except as otherwise provided in this Act the primary education cess shall be paid to the same persons in the same manner and at the same time as the road cess and public works cess are paid under the Cess Act, 1880.

Payment
of cess.

(2) Every holder of an estate shall yearly pay to the Collector the entire amount of the primary education cess calculated on the annual value of the lands comprised in such estate at the rate provided in sub-section (2) of section 29 less a deduction to be calculated at one and a half pice for every rupee of the revenue entered in the valuation roll of such estate as payable in respect thereof.

¹See foot-note 1 on page 185, ante.

[Ben. Act VII

(Chapter IV.—Cess and Tax for Primary Education.—Sections 31—34.)

(3) Every holder of a tenure shall yearly pay to the holder of the estate or tenure within which the land held by him is included the entire amount of the primary education cess calculated on the annual value of the land comprised in his tenure at the rate provided in sub-section (2) of section 29 less a deduction to be calculated at one and a half pice for every rupee of the rent payable by him for such tenure.

(4) Every cultivating *raiya*t shall pay to the person to whom his rent is payable seven-tenths of the said primary education cess calculated at the rate provided in sub-section (2) of section 29 upon the rent payable by him or upon the annual value, as ascertained under the provisions of the Cess Act, 1880, of the land held by him.

Ben. Act
IX of 1880,

First
imposition
of primary
education

31. When the primary education cess is for the first time imposed in any district or part of a district the Collector of the district shall cause a notification to be published and a proclamation to be made in the manner provided by section 40 of the Cess Act, 1880, announcing such imposition, and shall cause to be served on the holder of every estate within the district or part of the district concerned, a notice showing the amount of primary education cess payable in respect of his estate, and specifying the date from which such primary education cess will take effect :

Provided that no defect in the service of such notice shall affect the liability of any person or property to the payment of the primary education cess.

Provisions
of Cess Act
1880, to
apply to
assessment,
etc., of
education
cess.

32. Subject to the provisions of this Chapter, the provisions of the Cess Act, 1880, shall apply as far as possible to the assessment, levy, payment and recovery of the primary education cess.

Proceeds of
cess to be
paid into
District
Primary
Education
Fund.

33. The proceeds of the primary education cess in each district shall be paid by the Collector into the District Primary Education Fund of such district.

Tax for
primary
education.

¹34. (1) The District Magistrate or one of his subordinate officers shall from time to time examine the assessment list pre-

¹This section was substituted for the original section by sec. 4 of, and Sch. I to, the West Bengal Panchayat Act, 1957 (West Ben. Act I of 1957), as amended by sec. 15(b) of the West Bengal Panchayat (Amendment) Act, 1959 (West Ben. Act XV of 1959). See also the "Note" to foot-note 3 on page 186, *ante*.

Section 34 as substituted was as follows, namely :—

Ben. Act VI
of 1870.

Ben. Act V
of 1919.

"34. (1) The District Magistrate or one of his subordinate officers shall from time to time examine the assessment list prepared under section 16 of the Village Chaukidari Act, 1870, and shall consider the assessment made under section 38 of the Bengal Village Self-Government Act, 1919, and after

Tax on
trade,
business or
profession.

(foot-note continued next page),

of 1930.]

(Chapter IV.—Cess and Tax for Primary Education.—
Section 34.)

Ben. Act
VI of 1870.

Ben. Act
V of 1919.

West Ben.
Act I of
1957.

pared under section 16 of the Village Chaukidari Act, 1870, and shall consider the assessment made under section 38 of the Bengal Village Self-Government Act, 1919 and under clause (a) of sub-section (1) of section 57 of the West Bengal Panchayat Act, 1957, and, after such inquiry as he considers necessary, shall prepare a list of all persons assessed to pay the chaukidari rate or the union rate of the Panchayat tax, as the case may be, who, in his opinion, have been so assessed wholly or in part in respect of their circumstances arising out of their trade, business, profession, employment, vocation or calling.

(2) The District Magistrate shall assess a tax on each of such persons not exceeding one hundred rupees *per annum*.

(3) The amount of tax so assessed shall be communicated to the Union Board, Panchayat or Anchal Panchayat concerned, and the Union Board, Panchayat or Anchal Panchayat shall collect and shall have power to collect the tax in the same manner as the union rate or the chaukidari rate or the Panchayat tax :

Provided that the period within which the tax may be collected shall be three years from the date on which the tax becomes due.

(4) Any arrear of the said tax may be recovered by any process enforceable for the recovery of an arrear of union rate or chaukidari rate or Panchayat tax.

(5) The Union Board, Panchayat or Anchal Panchayat shall remit the amount of tax realised under this section to the District Magistrate after deducting ten *per cent.* thereof to defray the cost of collection :

Provided that the Union Board, Panchayat or Anchal Panchayat shall in addition be entitled to claim and retain ten *per cent.* of the total collection made by it during any financial year out of the taxes assessed under sub-section (2) for that financial year, if such total collection amounts to at least eighty *per cent.* of the aggregate of the taxes assessed for that financial year under that sub-section.

(6) The proceeds of the said tax in each district shall be paid by the District Magistrate into the District Primary Education Fund of such district.

such inquiry as he considers necessary, shall prepare a list of all persons assessed to pay the chaukidari rate or the union rate, as the case may be, who in his opinion, have been so assessed wholly or in part in respect of their trade, business¹, profession, employment, vocation or calling].

(2) The District Magistrate shall assess a tax on each of such persons not exceeding one hundred rupees *per annum*.

(3) The amount of tax so assessed shall be communicated to the Union Board or Panchayat concerned, and the Union Board or Panchayat [shall collect and shall have power to collect the tax in the same manner as the union rate or the chaukidari rate :

(foot-note continued next page).

¹These words within square brackets were substituted for the words "or profession" by sec. 2(a) of the Bengal (Rural) Primary Education (West Bengal Amendment) Act, 1950 (West Ben. Act XXIV of 1950.)

²These words and proviso were substituted for the words "shall collect the tax as if it were the union rate or the chaukidari rate" by sec. 2(b), *ibid.*

[Ben. Act VII

(Chapter IV.—Cess and Tax for Primary Education.—Section 35.—Chapter V.—Contribution from State Revenues.—Section 36.—Chapter VI.—District Primary Education Fund.—Section 37.)

Explanation.—In this section “*Panchayat tax*” means—

- (a) the tax assessed under clause (a) of sub-section (1) of section 57 of the West Bengal *Panchayat Act, 1957*, or
- (b) until any tax is so assessed, the *chaukidari* rate or the union rate assessed under the *Village Chaukidari Act, 1870*, or the *Bengal Village Self-Government Act, 1919*, and continuing in force under the proviso to sub-section (1) of section 4 of the *West Bengal Panchayat Act, 1957*.

West Ben.
Act I of
1957,

Ben. Act
VI of 1870.
Ben. Act
V of 1919.

Definitions.

35. For the purposes of this chapter, the expressions “annual value of land”, “cultivating *raiya*”, “estate”, “holder of an estate or tenure”, “land” and “tenure” have the same meaning as in section 4 of the *Cess Act, 1880*.

Ben. Act
IX of 1880.

CHAPTER V.

Contribution from ¹State Revenues.

Contribution from
State
Revenues.

36. In addition to the sums which may be appropriated from the ¹State revenues in any year for the purposes of primary education, the ²[State Government] shall every year provide a sum of twenty-three lakhs and fifty thousand rupees for expenditure on primary education in rural areas.

CHAPTER VI.

District Primary Education Fund.

District
Primary
Education
Fund.

37. (1) There shall be formed for each district in which the provisions of this chapter are in force, a fund to which shall be credited—

- (i) all sums granted by the ²[State Government] for the payment of grants to primary education ;

Provided that the period within which the tax may be collected, shall be three years from the date on which the tax becomes due.]

(4) Any arrears of the said tax may be recovered by any process enforceable for the recovery of an arrear of union rate or *chaukidari* rate.

(5) The Union Board or *Panchayat* shall remit the amount of tax realised under this section to the District Magistrate after deducting ten *per cent.* thereof to defray the cost of collection:

²Provided that the Union Board or *Panchayat* shall in addition be entitled to claim and retain ten *per cent.* of the total collection made by it during any financial year out of the taxes assessed under sub-section (2) for that financial year, if such total collection amounts to at least eighty *per cent.* of the aggregate of the taxes assessed for that financial year under that sub-section.

(6) The proceeds of the said tax in each district shall be paid by the District Magistrate into the District Primary Education Fund of such district.”

¹ See foot-note 1 on page 189, ante.

² See foot-note 1 on page 185, ante.

of 1930.]

(Chapter VI.—District Primary Education Fund.—Sections 38, 39.)

- (ii) all sums granted by the ¹[State Government] for the institution and maintenance of primary schools and for the payment of teachers in primary schools ;
- (iii) all sums granted by the ¹[State Government] for scholarships for children in primary schools ;
- (iv) the proceeds of the primary education cess levied in the district ;
- (v) the proceeds of the tax imposed under section 34 ;
- (vi) all income derived from any endowments or other property owned or managed by the Board for the purposes of this Act ;
- (vii) the amount of all fines and penalties imposed under this Act ²[other than fines and penalties levied by Magistrates] ;
- (viii) all sums received by the Board under section 49 ;
- (ix) all school fees, if any, collected in primary schools maintained by the Board ; and
- (x) all other sums of money which may be received by the Board under or for the purposes of this Act.

(2) The District Primary Education Fund shall become vested in the Board, be under its control and shall be held by it in trust for the purposes of this Act.

38. Except as otherwise provided in this Act, the District Primary Education Fund shall be applicable to the following objects in the following order :—

Expenditure from District Primary Education Fund.

Firstly—the payment of any sums which the Board may be liable to pay as interest upon loans raised by it for the purposes of this Act and the formation of a sinking fund when required ;

Secondly—the payment of the prescribed percentage of the cost of establishments entertained and expenses incurred by the Collector under section 91 of the Cess Act, 1880 ;

Thirdly—the indemnification of the Collector with the sanction of the Commissioner of the Division from any of the costs, charges and expenses incurred by him under chapter IV ;

Fourthly—the payment of the cost or the prescribed percentage of the cost of audit ;

Ben. Act
IX of 1880,

¹See foot-note, 1 on page 185, *ante*.

²These words were inserted by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

*(Chapter VI.—District Primary Education Fund.—
Sections 39, 40.)*

Fifthly—the payment of salaries ¹[and allowances] of the establishment of the Board and of teachers in primary schools and, subject to the prescribed conditions, of pensions, gratuities and grants made for supplementing contributions to the provident fund of the establishment of the Board and of teachers in primary schools ;

Sixthly—the payment of travelling allowance to members of the Board and its establishment as provided in section 13 ;

Seventhly—the payment of expenses incurred by the Board in the construction, equipment and maintenance of primary schools ; and

Eighthly—generally, the carrying out of the purposes of this Act.

Adminis-
tration of
District
Primary
Education
Fund.

39. (1) All moneys payable to the credit of the District Primary Education Fund shall forthwith be paid into the prescribed bank or Government treasury.

(2) All orders or cheques upon the said Fund shall be signed by the President or by such person as he may authorise in writing in this behalf.

(3) No money shall be spent from this Fund—

(a) except for the purposes of this Act, and

(b) unless its expenditure is provided for—

(i) in the budget of the Board as approved by the ²[State Government] under sub-section (2) of section 40, or

(ii) by reappropriation in the prescribed manner.

Budget.

40. (1) Every Board shall each year, prepare in the prescribed form a budget of income and expenditure of the Board for the ensuing financial year, and shall submit it to the ²[State Government] through the Director of Public Instruction on or before the thirtieth day of November.

(2) The ²[State Government] may either approve of the budget as it stands, or approve of it after making such alterations (if any) as it may think fit or may cause it to be returned to the Board for such modifications as the ²[State Government] may think necessary, and, when such modifications have been made, the budget shall be re-submitted for approval to the ²[State Government].

¹These words within square brackets were inserted by sec. 4 of the Bengal (Rural) Primary Education (Amendment) Act, 1958 (West Ben. Act XV of 1958).

²See foot-note 1 on page 185, *ante*.

(Chapter VII.—Audit.—Sections 41—47.)

CHAPTER VII.

Audit.

41. Accounts of receipts and expenditure of every Board shall be kept in the prescribed manner and form up to the prescribed day in each year. Keeping of accounts.

42. The accounts of every Board shall be audited and examined at least once in every year by such auditor as may be appointed by the ¹[State Government]. Accounts to be audited annually.

43. A copy of the accounts of every Board, duly made up and balanced, shall be deposited in the office of the Board and be open at the prescribed hours to the inspection of all interested persons for fourteen clear days before the audit; and all such persons may take copies or extracts from the same without fee. Accounts to be open to inspection.

44. (1) Before each audit the Board shall, after being informed by the auditor of the proposed date of audit, give at least fourteen days notice of the time and place to which the audit will be made and of the deposit of its accounts as provided by section 43. Notice of audit to be given.

(2) Such notice shall be given by posting outside the office of the Board and in such other way as may be prescribed.

45. (1) For the purpose of any audit the auditor may by order in writing require the production before him of all books, deeds, contracts, accounts, vouchers, receipts and other documents and papers which he may deem necessary and may require any person accountable for or having the custody or control of the same to appear before him at such audit and to make and sign a declaration as to their correctness or to answer any question or prepare and submit any statement relative thereto. Documents to be produced before auditor.

(2) It shall be the duty of the Board to comply with any requisition made by the auditor and to give all reasonable facilities to the auditor to inspect and audit the accounts of the Board.

46. Any person interested in the District Primary Education Fund may make an objection in writing to the accounts before the auditor. Power of persons interested to make objection at audit.

47. (1) The auditor shall disallow any item of expenditure which is contrary to law and shall give a written certificate that the sum so disallowed is due from the person making or authorising the illegal payment. Powers of auditor to certify sums due.

¹See foot-note 1 on page 185, *ante*.

[Ben. Act VI**(Chapter VII.—Audit.—Sections 41—49.)**

(2) If any person entrusted with the duty of accounting for the Board fails to bring any sum into account which ought to have been brought into account and by such default any deficiency or loss is caused to the Board the auditor shall give a written certificate that the amount of such deficiency or loss is due from the person so defaulting.

Appeal
from orders
of auditor.

48. (1) (a) Any person who has made an objection under section 46, if such objection has been overruled by the auditor, and

(b) any person from whom any sum has been certified by the auditor to be due under section 47

may appeal to the Commissioner of the Division against the decision of the auditor within thirty days, and the Commissioner may in appeal give any decision which might have been given by the auditor, and such decision shall be final.

(2) The Commissioner may, in his discretion, order that sums certified to be due under section 47 or sub-section (1) of this section shall not be realised under section 49, and such order shall be final.

Recovery
of sums
certified
due.

49. (1) Every sum credited to be due from any person by an auditor under section 47 or by the Commissioner of the Division under section 48 shall be paid by such person to the District Primary Education Fund, within fourteen days after the making of the certificate unless, in the case of a certificate by an auditor, an appeal under section 48 is pending.

(2) If payment is not made in accordance with the provisions of sub-section (1)—

(a) in the case of default by a ¹[servant of the Government] or member of the establishment of the Board the sum payable shall be recovered, subject to the prescribed conditions, by deduction from his salary bill, and

(b) in the case of default by any other person the auditor shall forward to the Collector a certificate under his signature specifying the sum payable, and the Collector, on receipt of such certificate, shall proceed to recover the sum as if it were a public demand under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
III of 1913.

¹The words "servant of the Crown" were originally substituted for the words "Government servant" by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1930.]

(Chapter VII.—Audit.—Section 50.—Chapter VIII.—Powers and duties of Union Boards, Union Committees, Panchayats, Gram Panchayats and Anchal Panchayats.—Sections 51, 52.)

50. Within fourteen days after the completion of the audit the auditor shall report on the accounts audited and examined and shall forward such report to the ¹[State Government] through the Director of Public Instruction and shall forward a copy of such report to the President of the Board concerned, who shall lay it before the Board.

Report of auditor to whom to be submitted.

CHAPTER VIII.

Powers and duties of Union Boards, Union Committees
²[, Panchayats, Gram Panchayats and Anchal Panchayats].

51. Subject to the prescribed conditions, the Board may and shall, if so required by an order of the ¹[State Government], delegate all or any of its powers of construction, repair, supervision and management of primary schools to Union Boards in areas in which the Bengal Village Self-Government Act, 1919, is in force, and elsewhere to Union Committees ³[, Panchayats, Gram Panchayats or Anchal Panchayats] and thereupon such Union Boards, Union Committees ⁴[, Panchayats, Gram Panchayats or Anchal Panchayats], shall, subject to its control, exercise such powers within the area under their authority.

Delegation of Board's powers to Union Boards, Union Committees, Panchayats, Gram Panchayats and Anchal Panchayats.

52. For the purposes of this Act every Union Committee constituted under the Bengal Local Self-Government Act of 1885, and every Panchayat appointed under the Village Chaukidari Act, 1870, shall be a body corporate by the name of "the Union Committee of (name of Union)" or, "the Panchayat of (name of village)", as the case may be, and shall have perpetual succession and a common seal, and shall by the said name sue and be sued, with power to acquire and hold property, both movable and immovable, and subject to the prescribed conditions, to transfer any property held by it and to contract and to do all other things necessary for the purposes of this Act.

Union Committees and Panchayats to be bodies corporate for purposes of Act.

Ben. Act
V of 1919.

Ben. Act
III of 1885.
Ben. Act
VI of 1870.

¹See foot-note 1 on page 185, *ante*.

²These words were substituted for the words "and Panchayats" by sec. 4 of, and Sch. I to, the West Bengal Panchayat Act, 1957 (West Ben. Act I of 1957) as amended by sec. 15 (b) of the West Bengal Panchayat (Amendment) Act, 1959 (West Ben. Act XV of 1959). See also the "Note" to foot-note 3 on page 186, *ante*.

³These words were substituted for the words "or Panchayats" by sec. 4 of, and Sch. I to, the West Bengal Panchayat Act, 1957 (West Ben. Act I of 1957) as amended by sec. 15(b) of the West Bengal Panchayat (Amendment) Act, 1959 (West Ben. Act XV of 1959). See also the "Note" to foot-note 3 on page 186, *ante*.

[Ben. Act VII

(Chapter VIII.—Powers and duties of Union Boards, Union Committees, Panchayats, Gram Panchayats and Anchal Panchayats. —Section 53.—Chapter IX.—Recognition of and grants to Primary Schools.—Sections 54, 55.)

Power of Union Board to transfer property and contract.

53. Notwithstanding anything contained in section 18 of the Bengal Village Self-Government Act, 1919 ¹[or in sub-section (4) of section 11 or section 30 of the West Bengal Panchayat Act, 1957], the power of every Union Board ¹[, Gram Panchayat or Anchal Panchayat] to transfer property or to contract shall, for the purposes of this Act, be subject to the prescribed conditions.

Ben. Act V of 1919. West Ben. Act I of 1957.

CHAPTER IX.

Recognition of and grants to Primary Schools.

Recognition.

54. (1) If the managing authority of any school desires that such school shall be recognised as a primary school under this Act, it shall submit an application in the prescribed form to the Board.

(2) The Board may, subject to the prescribed conditions, by an order in writing, grant such application, conditionally or unconditionally, or refuse or defer the grant of recognition and may also similarly withdraw recognition so granted.

(3) An appeal shall lie in respect of any order passed under sub-section (2) to the Director of Public Instruction or to any officer subordinate to him, being above the rank of District Inspector of Schools, to whom he may delegate his powers in this behalf in writing.

(4) The Board may, subject to the prescribed conditions, recognise any school in the district as a primary school although no application for recognition has been made by the managing authority of such school under sub-section (1).

Grants.

55. (1) If the managing authority of any primary school under private management desires that such school shall be granted aid, it shall submit an application in the prescribed form to the Board.

(2) The Board may, subject to the prescribed conditions, by an order in writing, grant such application, conditionally or unconditionally, or refuse or defer the grant of aid.

(3) An appeal shall lie in respect of any order passed under sub-section (2) to the Director of Public Instruction or to any officer subordinate to him, being above the rank of District Inspector of Schools, to whom he may delegate his powers in this behalf in writing.

¹These words were inserted by sec. 4 of, and Sch. I to, the West Bengal Panchayat Act, 1957 (West Ben. Act I of 1957), as amended by sec. 15(b) of the West Bengal Panchayat (Amendment) Act, 1959 (West Ben. Act XV of 1959). See also the "Note" to foot-note 8 on page 186, ante.

(Chapter X.—Compulsory Education.—Sections 56—60.)

CHAPTER X.

Compulsory Education.

56. If the ¹[State Government], after consulting the Board concerned, is satisfied that there is adequate provision for primary education ²[in any area lying within the jurisdiction of a Union Board, Union Committee, *Panchayat* or *Gram Panchayat*] it may, by notification, declare that primary education shall be compulsory within such area.

Notification by State Government.

57. No fee shall be charged by any primary school under public management in any area in which primary education has been declared compulsory under section 56 and also from the time the provisions of this Act have been extended and cess imposed in any area, even before primary education be declared compulsory:

No fees to be charged.

58. At the instance of the Board the ¹[State Government] may, by notification, exempt from the operation of section 59, section 62 and section 63 any person or class of persons in any area in which primary education has been declared compulsory under section 56.

Exemptions.

59. In any area in which primary education has been declared compulsory under section 56 the guardian of every child resident in such area shall, subject to the exception specified in section 60, cause such child to attend a primary school.

Responsibility of guardians.

60. Attendance at a primary school shall not be compulsory on a child if—

Conditions exempting from attendance.

- (1) there is no primary school within two miles or such less distance as may be specified by general or special order of the Board in this behalf from the residence of the child ;
- (2) the child is under eight years of age and there is no primary school within one mile from the residence of the child ;
- (3) the child is prevented from attending the school by sickness, infirmity or other cause declared by a resolution of the Union Board, Union Committee ³[, *Panchayat* or *Gram Panchayat*] concerned to be a reasonable excuse for non-attendance ;

¹ See foot-note 1 on page 185, *ante*.

² The words "in any area.....Union Committee or *Panchayat*" were originally substituted for the words "in any area for which a Union Board, Union Committee or *Panchayat*, has been constituted" by sec. 8 of the Bengal (Rural) Primary Education (West Bengal Amendment) Act, 1950 (West Ben. Act XXIV of 1950). Thereafter the words "*Panchayat* or *Gram Panchayat*" were substituted for the words "or *Panchayat*" by sec. 4 of, and Sch. I to, the West Bengal *Panchayat* Act, 1957 (West Ben. Act I of 1957), as amended by sec. 15(b) of the West Bengal *Panchayat* (Amendment) Act, 1959 (West Ben. Act XV of 1959). See also the "Note" to foot-note 3 on page 186, *ante*.

³ These words were substituted for the words "or *Panchayat*" by sec. 4 of, and Sch. I to, the West Bengal *Panchayat* Act, 1957 (West Ben. Act I of 1957), as amended by sec. 15(b) of the West Bengal *Panchayat* (Amendment) Act 1959 (West Ben. Act XV of 1959). See also the "Note" to foot-note 3 on page 186, *ante*.

(Chapter X.—Compulsory Education.—Sections 60A—62.)

- (4) the child is receiving instruction in some other manner approved by the prescribed officer ;
- (5) the child has already received instruction in a primary school or otherwise to the satisfaction of the Board ; or
- (6) the Board has declared that, owing to agricultural operations, children residing in the area under the authority of any Union Board, Union Committee ¹[, *Panchayat* or *Gram Panchayat*] within the jurisdiction of the Board shall be exempt from attendance at a primary school for a period to be specified in the declaration.

Child once admitted to a primary school to attend up to the end of the primary stage.

²60A. In any area in which primary education has not been declared compulsory under section 56, the guardian of a child who has once been admitted to a primary school situated in such area, shall cause such child to attend that school up to the end of the stage of primary education provided in that school unless—

- (a) the child is prevented from attending that school by sickness, infirmity or other cause declared by a resolution of the Union Board, Union Committee ¹[, *Panchayat* or *Gram Panchayat*] concerned, to be a reasonable excuse for non-attendance ; or
- (b) the child obtains a transfer certificate and is admitted to another primary school ; or
- (c) the child is receiving instruction in some other manner approved by the officer referred to in clause (4) of section 60.

Attendance Committees.

61. The Union Board, Union Committee ¹[, *Panchayat* or *Gram Panchayat*] concerned shall be responsible for the enforcement of the provisions of section 59, ²[section 60A,] section 62 and section 63, subject to the prescribed conditions, shall appoint one or more Attendance Committees for this purpose.

Default by guardian.

62. (1) If an Attendance Committee is satisfied that a guardian has, without reasonable excuse and after receiving a written caution from the Attendance Committee, failed to comply with the provisions of section 59, ⁴[or section 60A,] it shall send a written complaint against the guardian to a Magistrate having jurisdiction.

¹ See foot-note 3 on page 208, *ante*.

² Section 60A was inserted by sec. 2 of the Bengal (Rural) Primary Education (West Bengal Amendment) Act, 1950 (West Ben. Act LVII of 1950).

³ This word, figures and letter were inserted by sec. 3 of the Bengal (Rural) Primary Education (West Bengal Amendment) Act, 1950 (West Ben. Act, LVII of 1950).

⁴ These words, figures and letter within square brackets were inserted by sec. 4, *ibid*.

of 1930.]

(Chapter X.—Compulsory Education.—Section 63.—Chapter XI.—Religious Instruction.—Section 64.—Chapter XII.—Indemnity.—Section 65.—Chapter XIII.—Rules.—Section 66.)

(2) The Magistrate, if satisfied that the complaint is well-founded, shall direct the guardian to cause the child in respect of whom the complaint was preferred to attend a primary school regularly from a date to be specified in such direction.

63. (1) If an Attendance Committee is satisfied that a guardian has without reasonable excuse failed to comply with a direction issued to him under sub-section (2) of section 62, it shall sanction his prosecution, and on conviction by a Magistrate such guardian shall be liable to a fine which may extend to five rupees.

Penalty for default.

(2) Any person who has on two or more previous occasions been convicted of an offence under this section shall, on further conviction for such offence, be liable to a fine which may extend to fifty rupees.

CHAPTER XI.

Religious Instruction.

64. Subject to the prescribed conditions, provision shall, so far as possible, be made in every primary school for the religious instruction at least once in every week during school hours of every child attending the school in the religion of the guardian of such child :

Religious instruction.

Provided that, at the request in writing of the guardian of any child, such child shall be exempted from such religious instruction.

CHAPTER XII.

Indemnity

65. No suit, prosecution or legal proceeding whatever shall lie against any person in respect of anything which is in good faith, done or intended to be done under this Act.

Indemnity.

CHAPTER XIII.

Rules.

66. (1) The [State Government] may, after previous publication, make rules for carrying out the purposes of this Act.

Power of State Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the educational authority referred to in clause (1) of section 2 ;

* See foot-note 1 on page 185 ante.

(Chapter XIII.—Rules.—Section 66.)

- (b) the age limit referred to in clause (3) of section 2 ;
- (c) the subjects and standards referred to in clause (14) of section 2, and the circumstances in which such subjects may vary in different schools ;
- (d) the resignation of members, the circumstances in which and the authority by which any member of the Committee may be removed ;
- (e) the filling of any vacancy in the Committee whether temporary or otherwise ;
- (f) the regulation of travelling allowances of members of the Committee and of their remuneration, if any ;
- (g) the appointment of the staff of officers and servants of the Committee ¹* * * * and the ²[salaries] and allowances of such staff ;
- (h) ³* * * the method of conducting the business of the Committee ;
- ⁴(i) the manner of election of members and the Secretary of the Committee under section 4, the manner of election of members of the Board under clauses (f), (g) and (i) of section 6 and the qualifications of the teachers of primary schools who shall be entitled to vote at an election under clause (i) of section 6 ;
- (j) the manner of election of the President of the Board under sub-section (1) of section 8 ;
- (k) the amount and manner of payment of travelling allowances under section 13 ;
- (l) the conditions subject to which the Board under section 14, the Union Committee and the *Panchayat* under section 52 and the Union Board ⁵[*Gram Panchayat* or *Anchal Panchayat*] under section 53 may transfer property held by them and may contract ;

¹The words "and the Board" were omitted by sec. 8(1) of the Bengal (Rural) Primary Education (Amendment) Act, 1948 (Ben. Act IV of 1948).

²This word was substituted for the word "pay" by sec. 5(1) of the Bengal (Rural) Primary Education (Amendment) Act, 1958 (West Ben. Act XV of 1958).

³The words "the appointment of a President of the Committee and" were omitted by sec. 8(8) of the Bengal (Rural) Primary Education (Amendment) Act, 1948 (Ben. Act IV of 1948).

⁴Clause (i) was substituted for the original clause (i) by sec. 8(3) of the Bengal (Rural) Primary Education (Amendment) Act, 1948 (Ben. Act IV of 1948).

⁵These words were inserted by sec. 4 of, and Sch. I to, the West Bengal *Panchayat* Act, 1957 (West Ben. Act I of 1957), as amended by sec. 15(h) of the West Bengal *Panchayat* (Amendment) Act, 1959 (West Ben. Act XV of 1959). See also the "Note" to foot-note 3 on page 186, *ante*.

(Chapter XIII.—Rules.—Section 66.)

- (m) the number of meetings to be held by the Committee and the Board, the number of members who constitute a quorum thereat, the keeping of minutes of the proceedings thereof, the submission of copies of such proceedings of the Committee to the ¹[State Government] and of the Board to the Commissioner of the Division, and the preparation and custody of registers and records by such Committee or Board ;
- (n) the manner of preparing schemes under clause (c) of sub-section (1) of section 23 ;
- (o) the manner of opening additional primary schools and of the expansion of existing primary schools referred to in clause (d) of sub-section (1) of section 23 ;
- (p) the conditions referred to in clause (g) of sub-section (1) of section 23 ;
- (q) the manner of making grants under clause (i) of sub-section (1) of section 23 ;
- (r) the conditions relating to pensions, gratuities and provident or annuity funds referred to in clause (n) of sub-section (1) of section 23 and in clause *Fifthly* of section 38 ;
- (s) the reports and statements referred to in section 25 ;
- (t) the conditions of appointment, punishment or dismissal of the staff of the Board under section 26 ²[and the salaries ³(and allowances) of such staff] ;
- (u) the percentage of cost of establishments referred to in clause *Secondly* of section 38 ;
- (v) the percentage of cost of audit referred to in clause *Fourthly* of section 38 ;
- (w) the bank or Government treasury referred to in sub-section (1) of section 39 ;
- (x) the manner of reappropriation referred to in sub-clause (ii) of clause (b) of sub-section (3) of section 39 ;
- (y) the form of budget prepared by the Board under section 40 ;

¹See foot-note 1 on page 185, *ante*.

²These words within square brackets were inserted by sec. 8(4) of the Bengal (Rural) Primary Education (Amendment) Act, 1943 (Ben. Act IV of 1943).

³The words "and allowances" within chain brackets were inserted by sec. 5(2) of the Bengal (Rural) Primary Education (Amendment) Act, 1958 (West Ben. Act XV of 1958).

[Ben. Act VII

(Chapter XIV.—Repeals and Amendments.—Section 67.)

- (z) the manner and form of accounting and the day up to which accounts shall be kept under section 41 ;
- (z1) the hours for inspection of accounts referred to in section 43 ;
- (z2) the procedure of auditors and all matters incidental and ancillary to the audit of accounts ;
- (z3) the manner of giving notice under sub-section (2) of section 44 ;
- (z4) the conditions of recovery of sums under clause (a) of sub-section (2) of section 49 ;
- (z5) the conditions of the delegation of powers by the Board to Union Boards, Union Committees ¹[*Panchayats, Gram Pauchayats and Anchal Panchayats*] under section 51 ;
- (z6) the form of application for, and the conditions of grant of, and withdrawal of, recognition under section 54 ;
- (z7) the form of application for, and the conditions of grant of aid under section 55 ;
- (z8) the officer referred to in clause (4) of section 60 ;
- (z9) the conditions of appointment of an Attendance Committee under section 61 ; and
- (z10) the conditions of provision for religious instruction under section 64.

CHAPTER XIV.

Repeals and Amendments.

67. The enactments specified in the Schedule shall be repealed or amended to the extent and in the manner mentioned in the fourth column thereof.

Repeals
and
amend-
ments of
certain
enact-

¹These words were substituted for the words "and *Panchayats*" by sec. 4 of, and Sch. I to, the West Bengal *Panchayat* Act, 1957 (West Ben. Act I of 1957), as amended by sec. 15 (b) of the West Bengal *Panchayat* (Amendment) Act, 1959 (West Ben. Act XV of 1959). See also the "Note" to foot-note 8 on page 188, *ante*.

[at 1930.]

(The Schedule.—Enactments repealed or amended.)

THE SCHEDULE.

Enactments repealed or amended.

(See section 67.)

Year.	No.	Short Title.	Extent of repeal or amendment.
1	2	3	4
1885	III ...	The Bengal Local Self-Government Act of 1885.	<p>1. In section 62 the words "primary and" shall be omitted.</p> <p>2. In clause (a) of section 63 after the words "class of schools" the words "except primary schools recognised under section 54 of the Bengal (Rural) Primary Education Act, 1930" shall be inserted.</p> <p>3. In clause (a) of section 65 after the words "class of schools" the words "except primary schools recognised under section 54 of the Bengal (Rural) Primary Education Act, 1930" shall be inserted.</p> <p>4. Section 112 shall be repealed.</p> <p>5. In clause (g) of section 138 the words "primary schools and" shall be omitted, and for the words and figures "sections 112 and 118" the word and figures "section 118" shall be substituted.</p>
	IV ...	The Bengal Primary Education Act, 1919.	The proviso to sub-section (2) of section 1 shall be repealed.
	V ...	The Bengal Village Self-Government Act, 1919.	<p>1. In section 32 the words "primary school or" and "primary schools or" where they occur shall be omitted.</p> <p>2. After section 32 the following shall be inserted, namely :—</p> <p>"32A. Subject to the provisions of the Bengal (Rural) Establishment Primary Education and management Act 1930, and to of primary the control of the schools. District School Board constituted under that Act, the Union Board may establish primary schools or assume charge of existing primary schools and shall repair, maintain and manage any primary school under its charge."</p> <p>3. In clause (j) of sub-section (2) of section 101 the words "schools and" shall be omitted.</p>

Bengal Act III of 1931

THE BENGAL STATE AID TO INDUSTRIES ACT, 1931.

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5. Chairman and Vice-Chairman.
6. Elections and appointments to be notified in the *Official Gazette*.
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11. President at meetings.
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13. Delegation of functions of Chairman.
14. Power of Board to make regulations.
15. Supersession of Board.
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17. Documents and reports to be furnished to the State Government.
18. Staff of the Board.
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20. State aids in the form of loans not exceeding fifteen thousand rupees.
21. Industries getting State aid to make provision for training apprentices and bar to grant of loans to certain companies.
22. Inspection and returns.
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24. Power of Board to receive donations, etc.
25. Method of recovery of money due.
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27. Fees.
28. Supervision of assisted industry.
29. Recovery of sums due.
30. Powers and protection of persons acting under this Act.
31. Finality of decision of State Government.
32. Power of State Government to make rules.

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Bengal Act III of 1931¹

The Bengal State Aid To Industries Act, 1931.²

REPEALS

.. Nil

AMENDMENTS

.. { West Ben. Act. XV of 1954.
West Ben. Act XVI of 1956.
West Ben. Act XII of 1961.
The Government of India (Adap-
tation of Indian Laws) Order,
1937.

ADAPTED

The Indian Independence (Adap-
tation of Bengal and Punjab
Acts) Order, 1948.

The Adaptation of Laws Order,
1950.

[22nd October, 1931.]

*An Act to provide for the giving of State aid to industries in
Bengal.*

WHEREAS it is expedient to make provision for the giving of
State aid to industries in Bengal ;

AND WHEREAS the previous sanction of the Governor-General
under sub-section (3) of section 80A of the Government of India
Act has been obtained to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal State Aid to Indus-
tries Act, 1931.

(2) It extends to the whole of ³[West Bengal].

(3) It shall come into force on such date⁴ as the ⁵[State
ment] may, by notification, appoint.

2. In this Act, unless there is anything repugnant in the sub-
ject or context,—

(1) "Board" means the Board of Industries established under
section 3 ;

(2) "Chairman" means the Chairman of the Board ;

Short title,
local
extent and
commence-
ment.

Definitions.

¹This Act may be read along with the provisions of sub-section (2) of
section 1 of the Bengal State Aid to Industries (Amendment) Act, 1954 (West
Ben Act XV of 1954), wherein it is provided that—

"It shall come into force at once : Provided that the term of office of the
members constituting the Board at the commencement of this Act, shall
continue, as if this Act had not been passed, until a date to be appointed in
this behalf by the State Government by notification in the *Official Gazette*".

²For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1930,
Pt. IV, page 107 ; and for report of the Select Committee, see *ibid*, page 148 ;
and for Proceedings in Council, see the Bengal Legislative Council Proceedings,
Vol XXXV, page 203 and Vol XXXVII, pages 140 and 217.

³These words were substituted for the word "Bengal" by Art 3(2) of the
Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴This Act came into force on the 15th January, 1932, vide notification
No. 7892-Ind., dated the 23rd December, 1931, published in the *Calcutta
Gazette*, dated the 31st December, 1931, Pt. I, page 1686.

⁵The words "Provincial Government" were originally substituted for the
words "Local Government" by paragraph 4(1) of the Government of
India (Adaptation of Indian Laws) Order, 1937, thereafter the word "State"
was substituted for the word "Provincial" by paragraph 4(1) of the Adap-
tation of Laws Order, 1950.

[Ben. Act III]

(Section 3.)

(3) "Director" means the Director of Industries, ¹[West Bengal], and includes any person appointed by the ²[State Government] to discharge the functions of the Director under this Act ;

³(4) "industry" shall for the purposes of this Act include an industry which is being established, and agriculture ;

(5) "machinery" includes plant, apparatus, tools and other appliances required for carrying on any industrial operation or process ;

(6) "notification" means a notification published in the ⁴[Official Gazette] ;

(7) "owner" means the person who owns any industrial undertaking, and includes the successors in interest of such person in respect of such undertaking ; and

(8) "prescribed" means prescribed by rules made under this Act.

Establishment of a Board of Industries.

⁵3 (1) The State Government shall establish a Board to be called "the Board of Industries" for carrying out the purposes of this Act, and consisting of the following members, namely :—

* * * * *

(b) one member associated with a scheduled bank having its head office in the State and conversant with the conditions of industrial finance in the State, to be appointed by the State Government ;

Explanation.—In this clause the expression "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 ;

II of 1934.

(c) four members, not being officers in the service of Government, to be appointed by the State Government, two of whom shall be appointed to represent industry and the other two to represent trade ;

(d) four members, not being officers in the service of Government to be appointed by the State Government, two of whom shall be appointed to represent cottage industries and the other two to represent small-scale industries ;

¹ See foot-note 3 on page 217, *ante*.

² See foot-note 5 on page 217, *ante*.

³ Substituted for the former clause (4) by sec. 2 of the Bengal State Aid to Industries (Amendment) Act, 1961 (West Ben. Act XII of 1961),

⁴ These words were substituted for the words "Calcutta Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵ This section was substituted for the original section 8 by section 2 of the Bengal State Aid to Industries (Amendment) Act, 1954 (West Ben. Act XV of 1954.)

⁶ Clause (a) was omitted by sec. 3(a) of the Bengal State Aid to Industries (Amendment) Act, 1961 (West Ben. Act XII of 1961),

of 1931.]

(Sections 4—6.)

- (e) one member to be appointed by the Financial Corporation of the State of West Bengal ¹[from amongst the members of the Board of Directors of such Corporation] if and when such Corporation is established under the State Financial Corporation Act, 1951 ;
- (f) the Director of Industries, *ex-officio* ;
- (g) two members to be elected by the West Bengal Legislative Assembly from among the members of the Assembly, not being a Minister, a Minister of State or a Deputy Minister of the Government of West Bengal ;
- (h) one member to be elected by the West Bengal Legislative Council from among the members of the Council, not being a Minister, a Minister of State or a Deputy Minister of the Government of West Bengal :

Provided that the Board shall have power to co-opt for the discussion of any particular question before it not more than three members specially qualified to advise on the matter in question or having special knowledge of local conditions in the area where the industry in question is situate.

(2) An officer appointed in this behalf by the State Government shall be the Secretary to the Board.

4. If, by such date as may be fixed by the ²[State Government], any of the bodies referred to in ³[clauses (e), (g) and (h) of sub-section (1) of section 3 does not appoint or elect the member to be appointed or elected by it, as the case may be,] under the provisions of that section the ²[State Government] shall appoint a suitable person to be such member, and any person so appointed shall be deemed to be a member as if he had been ⁴[duly appointed or elected, as the case may be, by the body failing to appoint or elect] a member under the said provisions.

Procedure in default of election or appointment of members.

5. The Board may from time to time elect, for such periods, respectively, as it thinks fit, two of its members to be Chairman and Vice-Chairman.

Chairman and Vice-Chairman.

6. The names of the Chairman and Vice-Chairman and of the appointed and elected members of the Board shall be published by the ²[State Government] in the ⁵[Official Gazette].

Elections and appointments to be notified in the Official Gazette.

¹Inserted by sec. 3 (b) of the Bengal State Aid to Industries (Amendment) Act, 1961 (West Ben. Act XII of 1961).

²See foot-note 5 on page 217, *ante*.

³These words were substituted for the words "clause (c), (d), (e), (f) and (g) of sub-section (1) of section 3 does not elect the member to be elected by it" by sec. 3(a) of the Bengal State Aid to Industries (Amendment) Act, 1954 (West Ben. Act XV of 1954).

⁴These words were substituted for the words "duly elected by the body failing to elect" by sec. 3(b), *ibid*.

⁵See foot-note 4 on page 218, *ante*.

[Ben. Act III]

(Sections 7, 8.)

Term of
office.

7. (1) The Chairman may resign his office by giving notice in writing to the Board ; and, on such resignation being accepted, shall be deemed to have vacated his office.

(2) The Vice-Chairman and any other appointed or elected member may resign his office by giving notice in writing to the Chairman ; and, on such resignation being accepted by the Chairman, shall be deemed to have vacated his office.

(3) Subject to the provisions of this Act, the appointed or elected members shall hold office for a term of three years and may, on the expiration of such term, be re-appointed or re-elected.

(4) Notwithstanding the expiration of the term of three years mentioned in sub-section (3), an appointed or elected member shall continue to hold office until the vacancy caused by the expiration of the said term has been filled.

Removal
of
members.

8. (1) The ¹[State Government] may, by notification, remove the Chairman, Vice-Chairman or any member of a Board if he—

(a) is absent without leave for more than four months continuously from the jurisdiction of the Board ;

(b) refuses to act or becomes incapable of acting as a member of the Board ;

(c) is declared insolvent ;

(d) is convicted of any such offence or is subjected by a criminal court to any such order as in the opinion of the ¹[State Government] implies a defect of character which unfits him to continue to be a Chairman, Vice-Chairman or member of a Board ; ²*

(e) without excuse sufficient in the opinion of the ¹[State Government], is absent without the consent of the Board from more than four consecutive meetings of the Board ; ³or

³(f) being a member of the Board appointed or elected, as the case may be, to represent a particular body, interest or constituency, ceases to represent such body, interest or constituency.

(2) The ¹[State Government] may fix a period during which any person so removed shall not be eligible for re-appointment or re-election.

¹See foot-note 5 on page 217, *ante*.

²The word "or" was omitted by sec. 4(i) of the Bengal State Aid to Industries (Amendment) Act, 1954 (West Ben. Act XV of 1954).

³The word "or" was added to clause (e) and new clause (f) was inserted by sec. 4(ii), *ibid*.

of 1931.]

(Sections 9—14.)

9. When the place of an appointed or elected member of a Board becomes vacant by his removal, resignation or death, a new member shall be appointed or elected in the manner provided in section 3, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred :

Casual vacancies.

Provided that no act of the Board, or of its officers, shall be deemed to be invalid by reason only that the number of members of the Board at the time of the performance of such act was less than the number provided by section 3.

10. The members and staff of the Board and the members of committees appointed by the Board shall be paid travelling and daily allowances of the prescribed amount and on the prescribed conditions for attending meetings of the Board, and may also be paid fees of the prescribed amount and on the prescribed conditions for attending meetings of the Board, or for performing any duty assigned to them by the Board for the purposes of this Act.

Allowances and fees.

11. (1) The Chairman, or, in his absence, the Vice-Chairman, shall preside at every meeting of the Board, and shall have a second or casting vote in all cases of equality of votes.

President at meetings.

(2) In the absence of both the Chairman and vice-Chairman, the members present at any meeting may elect one of their number to preside, who shall have a second or casting vote in all cases of equality of votes.

12. No member of a Board shall vote on any question coming before the Board for consideration in which (otherwise than in its general application to all persons and properties within the ¹State) he has a pecuniary interest.

Interested members not to vote.

13. (1) The Chairman, with the consent of the Board, may authorise the Vice-Chairman by an order in writing to exercise any of the powers conferred or to perform any of the duties imposed on the Chairman by this Act, and thereupon the responsibility of the Chairman in respect of such powers and duties shall devolve upon the Vice-Chairman during the continuance of such order.

Delegation of functions of Chairman.

(2) When the office of Chairman is vacant, the Vice-Chairman shall exercise the functions of the Chairman until a new Chairman is appointed.

14. (1) The Board may make regulations in regard to the following matters, namely :—

Power of Board to make regulations.

(i) the time and place of meetings ;

(ii) the manner in which notice of meetings shall be given ;

¹The word "State" was substituted for the word "province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 15, 16.)

- (iii) the conduct of proceedings at meetings ;
- (iv) the division of duties among the members of the Board ;
- (v) the appointment, duties and procedure of special committees consisting wholly of members of the Board or partly of such members and partly of other persons ; and
- (vi) generally, the carrying out of the purposes of this Act.

(2) Any regulation made under sub-section (1) which is repugnant to the provisions of any rule made under section 32 shall, to the extent of such repugnancy, but not otherwise, be void.

¹(3) No recommendation for State aid made by the Board, no proceedings at meetings of the Board and no action taken by the Board shall be called in question by reason merely of—

- (a) the existence of any vacancy in, or any defect in the constitution of, the Board, or
- (b) any defect or irregularity not affecting the merits of the case.

Super-session of Board.

15. (1) If at any time it appears to the ²[State Government] that the Board is not properly performing the duties imposed upon it by or under this Act, the ²[State Government] may, after considering any explanation offered by the Board, by an order in writing specifying the reasons for so doing, remove all appointed and elected members of such Board and direct that the vacancies shall thereupon be filled by election in respect of elected members and by appointment in respect of appointed members or that all the vacancies shall be filled by appointment.

(2) From the date of an order under sub-section (1) until the vacancies are filled, all powers and duties of the Board shall be exercised and performed by such person, in such manner, as the ²[State Government] may direct.

Functions of the Board.

³16. The functions of the Board shall be—

- (a) to receive applications for State aid ;
- (b) to make such inquiries regarding applications as the Board deems necessary or as may be required by this Act ;
- (c) to report to the State Government upon applications for State aid ;

¹This sub-section (3) was added by sec. 5 of the Bengal State Aid to Industries (Amendment) Act, 1954 (West Ben. Act XV of 1954).

²See foot-note 5 on page 217, *ante*.

³This section 16 was substituted for the original section by sec. 6 of the Bengal State Aid to Industries (Amendment) Act, 1954 (West Ben. Act XV of 1954).

of 1931.]

(Sections 17—19.)

- (d) to frame schemes and programmes for such State action as the Board considers necessary for the steady and progressive development of industries in West Bengal for consideration of the State Government ; and
- (e) to advise the State Government on any other industrial matter that may be referred to it for opinion.

17. If the ¹[State Government] so directs, the Chairman shall forward to the ¹[State Government] any document and prepare and submit any report relating to the work of the Board.

Documents and reports to be furnished to the State Government.

²18. (1) The State Government shall sanction the staff of the Board and fix the scales of salaries and allowances of such staff. Such salaries and allowances shall be paid out of the Consolidated Fund of the State.

Staff of the Board.

(2) The qualifications, the manner of appointment, the period of probation (if any), the age of superannuation and other terms and conditions of service (including in particular rules for the control, discipline and punishment) of the staff of the Board shall be such as may be prescribed.

19. (1) ³[The State Government] on the recommendation of the Board may grant State aid to an industry in all or any of the following forms, namely :—

Forms of State aid.

- (a) the grant of a loan to be secured and repaid in the prescribed manner and upon such terms as may be fixed by the order granting it :

⁴Provided that—

- (i) the maximum amount of such loan shall not exceed ⁵[one lakh of rupees] in any one case ; and
- (ii) no such loan shall exceed seventy-five per cent. of the net value of the assets of the industry to which such loan is granted and of any other property, if any, which may be offered as collateral security for such loan ; and

¹See foot-note 5 on page 217, *ante*.

²Original section 18 was omitted by paragraph 8 of, and Sch. IV to, the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter this new section 18 was inserted by sec. 7 of the Bengal State Aid to Industries (Amendment) Act, 1954 (West Ben. Act XV of 1954).

³These words were substituted for the words "Subject to the provisions of section 21, the State Government" by sec. 2(a) of the Bengal State Aid to Industries (Amendment) Act, 1956 (West Ben. Act XVI of 1956).

⁴The first proviso which was substituted for the original first proviso by sec. 8(a) of the Bengal State Aid to Industries (Amendment) Act, 1954 (West Ben. Act XV of 1954) was further substituted by sec. 2(b) of the Bengal State Aid to Industries (Amendment) Act, 1956 (West Ben. Act XVI of 1956).

⁵Substituted for the words "twenty-five thousand rupees" by sec. 4 of the Bengal State Aid to Industries (Amendment) Act, 1961 (West Ben. Act XII of 1961).

[Ben. Act III]**(Section 19.)**

(iii) for the purpose of ascertaining the net value of the assets of the industry to which such loan is granted and of the property, if any, offered as collateral security—

any amount outstanding on account of any mortgage, charge or lien subsisting in respect of such assets or such property at the time of the grant of the loan shall be calculated and deducted in the prescribed manner ; and

any additional assets which may be created by the expenditure of the loan to be granted shall be taken into account to such extent as may be prescribed :

Provided also that every such loan shall, unless the ¹[State Government], for reasons to be recorded in writing, otherwise directs, be repayable within not more than ten or where the whole loan is secured on land or buildings or both within not more than twenty years after the date of the advance of the loan or, where the loan is advanced in instalments, after the date of the advance of the last instalment :

Provided also that the ¹[State Government], for reasons to be recorded in writing, may, on the application of the owner of an industry to which such loan has been granted, in exceptional cases, vary the terms fixed by the order granting the loan ;

(b) the guarantee of a cash credit, overdraft, or fixed advance with a bank to be secured and the amount realised thereunder by any industry to be repaid in the prescribed manner ;

(c) the taking of shares and debentures :

Provided that the amount paid by the ¹[State Government] for such shares and debentures shall not exceed the amount already paid by other persons for shares and debentures in the same industry ;

(d) the guarantee of interest on preference shares or debentures to be secured and the amount realised thereunder by any industry to be repaid in the prescribed manner ;

(e) the guarantee of a minimum return on the whole or part of the capital of a joint-stock company to be secured and the amount realised thereunder by any industry to be repaid in the prescribed manner ;

¹ See foot-note 5 on page 217 ante.

(Section 20.)

(f) The grant on favourable terms of land, raw material, firewood, water or any other ¹[property vested in the State Government] ;

²(g) the payment of a subsidy for—

(i) the conduct of research, including research about marketing ;

(ii) the purchase of machinery ; and

(h) subject to the prescribed conditions, the supply of machinery on the hire-purchase system.

(2) In the case of the grant of any of the forms of State aid specified in clauses (f) and (g) of sub-section (1), the ³[State Government] shall ordinarily in the order granting such aid fix a period of years and a rate of interest on the capital invested in the industry so aided, and, if within such period the industry pays a rate of interest or a dividend in excess of the rate so fixed, the value of the aid granted, as ascertained by the prescribed authority in the prescribed manner, shall be paid at the expiration of the said period by the owner of the industry to the ³[State Government].

(3) In no case shall the total value of all State aid granted to an industry, as ascertained by the prescribed persons in the prescribed manner, exceed the limit specified in the first proviso to clause (a) of sub-section (1).

State aids in the form of loans not exceeding fifteen thousand rupees.

20. When State aid is proposed to be given to an industry in the form of a loan not exceeding fifteen thousand rupees, then notwithstanding anything contained in sections 16 and 19, such aid may be granted by such authority and in accordance with such rules as may be prescribed.

¹The words "property vested in His Majesty for the purposes of the Province" were originally substituted for the words "property of the Local Government" by paragraph 3 of, and Sch. IV to, the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the words "the State Government" were substituted for the words "His Majesty for the purposes of the Province" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

²This clause (g) was substituted for the original clause (g) by sec. 8(b) of the Bengal State Aid to Industries (Amendment) Act, 1954 (West Ben. Act XV of 1954).

³See foot-note 5 on page 217, *ante*.

⁴Original section 20 was omitted by paragraph 3 of, and Sch. IV to, the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter this new section 20 was inserted by sec. 9 of the Bengal State Aid to Industries (Amendment) Act, 1954 (West Ben. Act XV of 1954). The said section 20 was further substituted by sec. 3 of the Bengal State Aid to Industries (Amendment) Act, 1956 (West Ben. Act XVI of 1956). Finally the said section was substituted for this new section by sec. 5 of the Bengal State Aid to Industries (Amendment) Act, 1961 (West Ben. Act XII of 1961).

(Sections 21—23.)

Industries getting State aid to make provision for training apprentices and bar to grant of loans to certain companies.

²¹21. (1) Every recipient of State aid shall make such provision for the training of apprentices as may be prescribed.

(2) No State aid shall be given to any joint stock company unless the company is registered in India with a rupee capital, and the State Government approves the composition of the Board of Directors of the Company.

Inspection and returns.

22. The owner of any industry—

(i) when an application has been made for State aid to such industry ; or

(ii) during the continuance of State aid to such industry in any of the forms specified in clauses (a), (b), (c), (d) and (e) of sub-section (1) of section 19 shall—

(a) comply with any general or special order of the ²[State Government] relating to the inspection of the premises, buildings or plant or stock-in-trade, employed, or to be employed, for the purposes of the industry ;

(b) permit the inspection by the prescribed person of all accounts relating to the industry ;

(c) submit the accounts relating to the industry to such audit as may be prescribed ;

(d) furnish in the prescribed manner to the prescribed person full returns of all products manufactured and sold both as regards description and quantity ;

(e) maintain such special accounts as may be prescribed ; and

(f) furnish such statements as the ²[State Government] may require.

Disposal of profits during continuance of State aid.

23. (1) During the continuance of State aid to any industry under section 19 the profits of such industry shall, if distributed, be distributed only after interest due on debentures and loans has been paid and an amount reasonable in the opinion of the ²[State Government] has been set aside for depreciation or obsolescence of plant and buildings and a further amount which shall not be less than twenty-five *per cent.* of the net surplus available after provision for depreciation or obsolescence has been carried to a reserve fund to be utilised in the prescribed manner and payment made to a sinking fund for the purpose of repayment in the prescribed manner of any loan granted under the provision of clause (a) of sub-section (1) of section 19 or of any sum guaranteed by the ²[State Government] under the provisions of clauses (b), (d) or (e) of that sub-section.

¹This section 21 was substituted for the original section by sec. 4 of the Bengal State Aid to Industries (Amendment) Act, 1956 (West Ben. Act XVI of 1956).

²See foot-note 5 on page 217, *ante*.

of 1931.]

(Sections 24—26.)

(2) No dividend shall be paid to shareholders and no profit shall be taken by the owner in excess of such percentage rate upon the amount of the paid-up capital invested in the industry as the ¹[State Government] may fix from time to time, during the continuance of State aid to the industry.

24. The Board shall have power to receive donations, endowments or contributions from the public on such conditions as may be approved by the ¹[State Government].

Power of Board to receive donations, etc.

25. All arrears of monies payable to the ¹[State Government] under this Act, including any interest chargeable thereon and costs, if any, incurred, shall be recoverable as a public demand.

Method of recovery of money due.

²26. (1) The State Government or any other authority specially empowered by the State Government in this behalf may, after giving the owner of an industry an opportunity of being heard, by an order stating the reasons for doing so, terminate aid in respect of such industry on any of the following grounds, namely :—

Power to State Government to terminate aid on account of fault.

- (i) that any portion of the aid given has been misapplied, or
- (ii) that there has been a breach by the owner of the industry of the provisions of this Act or of any rule made thereunder or of any condition of the grant, or
- (iii) that the application on which the aid has been granted contained, or was accompanied by, any material statement by the owner which he knew to be false, or any intentional concealment by him of any material fact, which in the opinion of the State Government it was his duty to disclose, or that any such false statement or concealment was intentionally made in any inquiry made under this Act by or with the connivance of the owner or in any return under this Act, or in reply to any requisition for information under this Act, or
- (iv) that the industry is being managed in such a manner as to endanger the repayment of the value of State aid granted thereto and repayable under this Act.

(2) When an order has been made under sub-section (1), then notwithstanding anything contained elsewhere in this Act or in any other enactment, the State Government may proceed to recover from the owner as a public demand—

- (a) the whole amount of any loan outstanding together with such interest as may be due thereon, or

¹See foot-note 5 on page 217, *ante*.

²Substituted for the former section by sec. 6 of the Bengal State Aid to Industries (Amendment) Act, 1961 (West Ben. Act XII of 1961).

[Ben. Act III]

(Sections 27—32.)

(b) in cases where the aid is given otherwise than by loan, the money value of the grant as fixed at the time when it was made, together with interest at a rate not exceeding twelve and a half *per cent.* from the date of the grant till the date of realisation, and

(c) in the cases mentioned in clause (a) or clause (b) the cost of recovery, and, if the State Government so directs, the cost of any inquiry made in connection therewith.

(3) An order made under sub-section (1) shall be final.

Fees.

27. The ¹[State Government] may charge in respect of applications, inquiries, inspections and audit by whomsoever made under this Act, such fees, if any, as may be prescribed.

Super-
vision of
assisted
industry.

28. During the continuance of State aid to an industry in any of the forms specified in clauses (a), (b), (d) and (e) of sub-section (1) of section 19 the ¹[State Government] may, by appointing directors or inspectors, or otherwise, take such steps as it deems advisable so to control the conduct of the industry as to safeguard the interests of the ¹[State Government] therein.

Recovery
of sums
due.

29. All sums payable under this Act shall, unless otherwise provided therein, be recoverable as if they were public demands.

Powers and
protection
of persons
acting
under this
Act.

30. Every person who acts on behalf of the ¹[State Government] or the Board under this Act (including every person who conducts an inquiry under this Act) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, and no suit, prosecution or other legal proceeding shall lie against any such or any other person for anything which is in good faith done or intended to be done under this Act.

Act XLV
of 1860.Finality of
decision of
State
Govern-
ment.

31. The decision of the ¹[State Government] as to whether the conditions imposed by or under any of the provisions of this Act have been satisfied shall be final.

Power of
State
Govern-
ment to
make rules.

32. (1) The ¹[State Government] may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

²(a) the manner of appointment of the member of the Board referred to in clause (e) of sub-section (1) of section 3 and the manner of election of the members of the Board referred to in clauses (g) and (h) of sub-section (1) of that section ;

(b) the payment of travelling and daily allowances and fees referred to in section 10 and the conditions of such payment ;

¹See foot-note 5 on page 217, *ante*.

²Clause (a) was substituted for the original clause by sec. 10 (i) of the Bengal State Aid to Industries (Amendment) Act, 1954 (West Ben. Act XV of 1954).

of 1931.]

(Section 32.)

¹(c) the matters referred to in sub-section (2) of section 18 ;

** * *

(e) the manner of securing and repaying the loans referred to in clause (a) of sub-section (1) of section 19 ;

²(f) the manner of calculating and deducting the amounts outstanding on account of any mortgage, charge or lien referred to in paragraph (iii) of the first proviso to clause (a) of sub-section (1) of section 19 and the extent to which additional assets referred to in that paragraph are to be taken into account ;

(g) the manner of securing and repaying the amounts referred to in clauses (b), (d) and (e) of sub-section (1) of section 19 ;

(h) the conditions of the supply of machinery on the hire-purchase system under clause (h) of sub-section (1) of section 19 ;

(i) the authority by which and the manner in which the values referred to in sub-sections (2) and (3) of section 19 shall be ascertained ;

⁴(ia) the authority and the rules referred to in section 20 ;

(j) the provision for training referred to in the second proviso to section 21 ;

(k) the person referred to in sub-clause (b) of clause (ii) of section 22 ;

(l) the audit referred to in sub-clause (c) of clause (ii) of section 22 ;

(m) the person to whom and the manner in which the returns referred to in sub-clause (d) of clause (ii) of section 22 shall be furnished ;

(n) the accounts referred to in sub-clause (e) of clause (ii) of section 22 ;

(o) the manner of utilising the amount carried to a reserve fund under sub-section (1) of section 23 and the manner of repayment of any loan or any sum guaranteed by the ⁵[State Government] referred to in that sub-section ;

¹Original clause (c) was omitted by paragraph 8 of, and Sch. IV to, the Government of India (Adaptation of Indian Laws) Order, 1937 and thereafter this new clause (c) was inserted by sec. 10 (ii) of the Bengal State Aid to Industries (Amendment) Act, 1954 (West Ben. Act XV of 1954).

²Clause (d) of section 32 (g) was omitted by paragraph 8 of, and Sch. IV to, the Government of India (Adaptation of Indian Laws) Order, 1937.

³Clause (f) was substituted for the original clause by sec. 5 (a) of the Bengal State Aid to Industries (Amendment) Act, 1956 (West Ben. Act XVI of 1956).

⁴This new clause was inserted by sec. 5(b), *ibid.*

⁵See foot-note 5 on page 217, *ante*.

[Ben. Act III of 1931.]

(Section 32.)

(p) the fees referred to in section 27 ; and

(q) generally, to regulate the conduct of its duties, the management of its proceedings, and the preparation and submission to the ¹[State Government] of the minutes thereof by the Board.

¹See foot-note 5 on page 217, *ante*.

Bengal Act I of 1932

(THE BENGAL MOTOR VEHICLES TAX ACT, 1932.)¹

REPEALED IN PART

.. Ben. Act XVI of 1946.

Ben. Act XIII of 1932.

Ben. Act XIV of 1945.

West Ben. Act XII of 1947.

West Ben. Act IX of 1949.

West Ben. Act XXXV of 1950.

West Ben. Act XVII of 1951.

West Ben. Act XVIII of 1954.

West Ben. Act IV of 1963.

AMENDED

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.

(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(c) The Adaptation of Laws Order, 1950.

ADAPTED

[24th March, 1932.]

An Act to provide for the imposition and levy of a tax on motor vehicles in Bengal.

WHEREAS it is expedient to raise funds for additional expenditure on roads in Bengal and for that purpose to impose a tax on motor vehicles in Bengal ;

Preamble.

AND WHEREAS the previous sanction of the Governor-General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act.

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Motor Vehicles Tax Act, 1932.

Short title, commencement and extent.

(2) It shall come into force on such date² as the³[State Government] may, by notification in the⁴[Official Gazette], appoint.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1931, Pt. IV, page 48 ; and for report of the Select Committee, see *ibid*, page 100 ; and for Proceedings in Council, see the Bengal Legislative Council Proceedings, 1931, Vol. XXXVII, page 121 and Vol. XXXVIII No. I, page 307.

²This Act came into force on the 1st April, 1932, *vide* notification No. 1140M., dated the 18th March, 1932, published in the *Calcutta Gazette*, dated the 24th March, 1932, Pt. I, page 696.

³The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act I

(Sections 2—4.)

(3) It extends to the whole of ¹[West Bengal].

Definitions.

²2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “prescribed” means prescribed by rules made under this Act ;

(2) “the tax” means the tax imposed under this Act ;

(3) “Taxing Officer” means an officer appointed under section 3 ;

(4) “tractor” means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion), and includes a motor vehicle used for towing disabled vehicles but does not include a road-roller ;

(5) words and expressions used, but not defined, in this Act shall have the same meaning as in the Motor Vehicles Act, 1939. IV of 1939.

Appoint-
ment of
Taxing
Officers.

3. The ³[State Government] may, by notification in the “[Official Gazette], appoint such persons or agency as it thinks fit to be Taxing Officers and may in such notification specify the areas within which such officers shall exercise the powers conferred and perform the duties imposed on them by or under this Act.

Imposition
of tax.

4. ⁴(1) A tax at the rate specified in the Schedule shall be imposed on all motor vehicles ⁵[used or kept for use] in West Bengal.

⁶Explanation.—For the purposes of this Act,—

(1) a person who keeps a motor vehicle of which the certificate of registration is current shall be deemed to keep such vehicle for use ; and

(2) “use” includes letting on hire otherwise than on a hire-purchase agreement.

* * * * *

¹These words were substituted for the word “Bengal” by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²Section 2 was substituted for the former section by sec. 2 of the Bengal Motor Vehicles Tax (Amendment) Act, 1963 (West Ben. Act IV of 1963).

³See foot-note 3 on page 231, *ante*.

⁴See foot-note 4 on page 231, *ante*.

⁵Sub-section (1) was substituted for the original sub-section (1) by sec. 2 of the Bengal Motor Vehicles Tax (Amendment) Act, 1951 (West Ben. Act XVII of 1951).

⁶Substituted for the words “kept for use” by sec. 3(1) (a) of the Bengal Motor Vehicles Tax (Amendment) Act, 1963 (West Ben. Act IV of 1963).

⁷This Explanation was added by sec. 3(2)(b), *ibid*.

⁸Sub-section (1a), which was inserted by sec. 3(2) of Ben Act XIII of 1939, was omitted by sec. 3(2), *ibid*.

of 1932.]

(Section 4.)

¹(2) The tax imposed under sub-section (1) shall be payable for the year and in advance by the person ²[by whom a motor vehicle is used or kept for use]:

Provided that a Taxing Officer may allow payment of the tax for one or more quarterly periods at the rate, for each such quarterly period, of one quarter of the tax payable for the year :

³Provided further that in the case of a motor vehicle temporarily registered under section 25 of the Motor Vehicles Act, 1939, only one-twelfth of the tax payable for the year shall be payable in respect of such vehicle as so registered : IV of 1939.

⁴Provided also that in the case of a motor vehicle registered outside West Bengal, whether temporarily under section 25 of the Motor Vehicles Act, 1939 or otherwise, which is used or kept for use in West Bengal temporarily, the tax shall be payable for every week or part thereof, for which the motor vehicle is so used or kept for use in West Bengal, at the rate of one-fiftysecond part of the tax payable for the year, per week.

⁵(3) If a Taxing Officer is satisfied ⁶[that the certificate of registration and the token delivered under section 9 on payment of the tax for the year in respect of a motor vehicle has been surrendered or] that a motor vehicle has not been used ⁷[or kept for use] for any complete calendar month in the year, he ⁸[shall, on application made under section 5, refund or remit] in respect of the said vehicle one-twelfth of the tax payable for the year for every complete calendar month for which the said vehicle has not been used ⁷[or kept for use] :

⁹Provided that where a motor vehicle, other than a motor vehicle for the transport of goods or plying for hire for the carriage of passengers, has not been used for any period in

¹Sub-section (2) was substituted for the original sub-section (2) by sec. 3(3) of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (Ben. Act XIII of 1932).

²Substituted for the words "who keeps a Motor Vehicle for use" by sec 3(3)(a) of the Bengal Motor Vehicles Tax (Amendment) Act, 1963 (West Ben. Act IV of 1963).

³This further proviso was added by sec. 2 of the West Bengal Motor Vehicles Tax (Amendment) Act, 1949 (West Ben. Act IX of 1949).

⁴This proviso was added by sec. 3(3)(b) of the Bengal Motor Vehicles Tax (Amendment) Act, 1963 (West Ben. Act IV of 1963).

⁵Sub-section (3) was substituted for the original sub-section (3) by sec. 3(4) of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (Ben. Act XIII of 1932).

⁶These words were inserted by sec. 3(4)(a) of the Bengal Motor Vehicles Tax (Amendment) Act, 1963 (West Ben. Act IV of 1963).

⁷These words were inserted by sec. 3(4)(b), *ibid.*

⁸Substituted for the words "shall refund or remit" by sec. 3(4)(c), *ibid.*

⁹This proviso was added by sec. 2 and the First Schedule to the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

[Ben. Act I

(Sections 4A—6.)

West Bengal by reason of its being removed and kept outside West Bengal during such period, the Taxing Officer shall not refund or remit in respect of the said vehicle any portion of the tax for the quarterly period during which the said vehicle is so removed.

¹(4) If any person fails to deliver a declaration or additional declaration in accordance with the provisions of section 6 the Taxing Officer may, after making such inquiry as he thinks fit, and after giving an opportunity to such person to be heard, * * * * * require him to pay any tax or additional tax which the Taxing Officer may find such person liable to pay under the provisions of this Act and may also impose on him a penalty which may extend to half the amount of the tax to which he is found liable.

Report of registered motor vehicles brought into West Bengal from outside.

²4A. Every person who brings into West Bengal any motor vehicle registered outside West Bengal whether temporarily under section 25 of the Motor Vehicles Act, 1939 or otherwise and uses or keeps for use such vehicle in West Bengal shall submit to the Taxing Officer a report thereof within such time, in such form and containing such particulars as may be prescribed.

IV of 1939.

Manner of claiming refund or remission.

³5. A person claiming to be entitled to a refund or remission of tax under sub-section (3) of section 4, shall, within such time as may be prescribed, make to the Taxing Officer an application in this behalf in writing which shall be accompanied by such documents as may be prescribed.

Declaration by person keeping a motor vehicle for use.

6. (1) Every person ⁴[by whom a motor vehicle is used or kept for use] shall fill up and sign a declaration in the prescribed form stating truly the prescribed particulars and shall deliver the declaration as so filled up and signed to the Taxing Officer and shall pay to the Taxing Officer the tax which he appears by such declaration to be liable to pay in respect of such vehicle.

(2) Where a motor vehicle is altered so as to render the person ⁵[by whom such vehicle is used or kept for use] liable to the payment of an additional tax under section 7, such person shall fill up and sign an additional declaration, in the prescribed form showing the nature of the alterations made and containing the prescribed particulars and shall deliver such additional

¹Sub-section (4) was substituted for the original sub-section (4) by sec. 8(5) of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (Ben. Act XIII of 1932).

²The words "if he so desires" were omitted by sec. 8(5) of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (West Ben. Act IV of 1932).

³Section 4A was inserted by sec. 4, *ibid.*

⁴Section 5 was substituted for the original section by sec. 5, *ibid.*

⁵Substituted for the words "who keeps a motor vehicle for use" by sec. 6(1) of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (West Ben. Act IV of 1932).

⁶Substituted for the words "who keeps such vehicle for use" by sec. 6(2), *ibid.*

of 1932.]

(Sections 7—9B.)

declaration as so filled up and signed to the Taxing Officer and shall pay to the Taxing Officer the additional tax payable under section 7 which he appears by such additional declaration to be liable to pay in respect of such vehicle.

1* * * *

7. Where any motor vehicle in respect of which the tax has been paid is altered in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable, the person ¹[by whom such vehicle is used or kept for use] shall be liable to pay an additional tax of a sum which is equal to the difference between the tax already paid in respect of such vehicle and the tax which is payable in respect of such vehicle after its being so altered. ** * *

Payment of additional tax.

8. The Taxing Officer shall grant and deliver to every person, who pays to him the tax or additional tax in respect of any motor vehicle, a receipt in which shall be specified the particulars of the tax paid and such other particulars as may be prescribed.

Receipt for tax.

9. (1) The Taxing Officer shall at the time of granting a receipt for the tax deliver to the person paying the tax a token of such form and containing such particulars as may be prescribed.

Token to be exhibited on motor vehicles.

(2) Every person to whom such token is delivered shall cause it to be exhibited in the prescribed manner on the vehicle in respect of which the tax is paid.

⁴9A. (1) Any person aggrieved by any order made by a Taxing Officer under this Act may appeal against the order to such appellate authority, in such manner, within such time and on payment of such fees as maybe prescribed.

Appeal.

(2) Any such appeal shall be heard and decided by the appellate authority in such manner as may be prescribed and the decision of the appellate authority on such appeal shall be final :

Provided that no appeal shall be decided without giving the appellant an opportunity of being heard.

⁴9B. (1) Any police officer in uniform or other officer of the State Government, not below such rank as may be prescribed, may—

Power to check and seize motor vehicles.

¹Sub-section (3) was omitted by sec. 6(3) of the Bengal Motor Vehicles Tax (Amendment) Act, 1968 (West Ben. Act IV of 1968).

²Substituted for the words "who keeps such vehicle for use" by sec. 7(1), *ibid.*

³The words "and the registering authority shall not grant a fresh certificate of registration or renew any certificate of registration in respect of such vehicle as so altered until such amount of tax has been paid" were omitted by sec. 7(3), *ibid.*

⁴Sections 9A and 9B were inserted by sec. 8, *ibid.*

(Sections 10—12.)

(a) check any motor vehicle either in its garage between the hours of sun rise and sun set or stop and check any motor vehicle plying on the road, for the purpose of satisfying himself that the tax payable under this Act in respect of such vehicle has been paid ; and

(b) seize and detain the vehicle if he is authorised by the State Government in this behalf and if he has reasons to believe that any motor vehicle has been or is being used or kept for use in contravention of the provisions of section 4A, section 6 or section 7, and may take or cause to be taken such steps as he may consider necessary for the temporary safe custody of the vehicle so seized and detained unless the owner or the person in charge of the vehicle executes a bond for the production thereof before a court when so required.

(2) Any motor vehicle seized and detained under clause (b) of sub-section (1) shall be produced before the court within twenty-four hours of such seizure and the court shall thereupon pass such orders as it may think fit for the disposal of the vehicle.

(3) Where any bond is executed under clause (b) of sub-section (1) for the production of any motor vehicle before the court, the provisions of section 514 of the Code of Criminal Procedure, 1898 shall, *mutatis mutandis*, apply to such bond.

Act V of
1898.

Contribution pay-
able to the
Corporation of
Calcutta.

10. (1) The ¹[State Government] shall pay annually to the Corporation of Calcutta the sum of four and a half lakhs of rupees being approximately the net amount of taxes derived by the Corporation from the taxation of motor vehicles under the Calcutta Municipal Act, 1923, for the year ending on the 31st March, 1930, to compensate the said Corporation for the future loss of revenue under this head.

Ben. Act
III of
1923.

(2) The contribution fixed under sub-section (1) shall be paid in such instalments, in such manner and on such dates as the ¹[State Government] may determine.

11. [Application of the proceeds of the tax.]—Omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

Power to
make
rules.

12. (1) The ¹[State Government] may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

¹ See foot note 8 on page 231, ante.

(Section 13.)

(2) In particular and without prejudice to the generality of the foregoing power, the ¹[State Government] may make rules for all or any of the following purposes, namely :—

- (a) to prescribe the form of any declaration, certificate, receipt or token, the particulars to be stated therein ²[the manner of exhibiting a certificate or token on a motor vehicle ³* * * * and the condition in which such certificate or token shall be maintained],
- ⁴(aa) to prescribe the fee for the issue of duplicate tokens,
- (b) to prescribe what shall be deemed to be ⁵[a year or a quarterly period,] ⁶[or a week] for the purposes of section 4,
- (c) to prescribe the powers and duties of the Taxing Officer and of the registering authority,
- d) to regulate the manner in which refunds or deductions or exemptions may be claimed, ⁷* * *
- (e) to regulate the method of assessing and recovering the tax,
- ⁸(f) any other matter which may be or is required to be prescribed.

(3) All rules made under this section shall be published in the ⁹[Official Gazette].

13. Whoever—

- (a) ¹⁰[uses or keeps for use] a motor vehicle without having paid the tax or additional tax in respect of such vehicle, or
 - (b) delivers a declaration or additional declaration wherein the particulars required by or under this Act to be therein set forth are not fully and truly stated, ¹¹or
 - ¹¹(c) obstructs any officer referred to in section 9B in the exercise of his powers under that section,
- shall be punishable with fine which may extend to one and a half times, and, in the event of such person having been previously

Penalties
for certain
offences.

¹See foot-note 3 on page 231, *ante*.

²These words were substituted for the words "and the manner of exhibiting such token on a motor vehicle" by sec. 8(1) of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (Ben. Act XIII of 1932).

³The words "or trailer" were omitted by sec. 9(1) of the Bengal Motor Vehicles Tax (Amendment) Act, 1963 (West Ben. Act IV of 1963).

⁴Clause (aa) was inserted by sec. 9(2), *ibid*.

⁵These words were substituted for the words "quarterly periods" by sec. 8(2) of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (Ben. Act XIII of 1932).

⁶These words were inserted by sec. 9(3) of the Bengal Motor Vehicles Tax (Amendment) Act, 1963 (West Ben. Act IV of 1963).

⁷The word "and" was omitted by sec. 9(4), *ibid*.

⁸Clause (f) was added by sec. 9(5), *ibid*.

⁹See foot-note 4 on page 231, *ante*.

¹⁰Substituted for the words "keeps for use" by sec. 10(1) of the Bengal Motor Vehicles Tax (Amendment) Act, 1963 (West Ben. Act IV of 1963).

¹¹The word "or" was added at the end of clause (b) and after that clause as so amended clause (c) was inserted by sec. 10(2), *ibid*.

(Sections 13A—17.)

convicted of an offence under this Act or any rule made thereunder, with fine which may extend to twice the amount of the ¹[tax payable for the year] for the motor vehicle in respect of which the offence is committed ²[and the amount of any tax due shall also be recovered as if it were a fine].

Suspension
of the
certificate
of regis-
tration.

³13A. If a Taxing Officer is satisfied that in respect of any motor vehicle—

- (a) a declaration or additional declaration has not been delivered in accordance with the provisions of section 6, within one month of the date on which such declaration or additional declaration was due, or
- (b) any tax or additional tax payable under this Act has not been paid within one month of the date on which such tax was payable, or
- (c) any penalty imposed under sub-section (4) of section 4 has not been paid within one month of the date on which such penalty was imposed ;

he may, notwithstanding anything contained in ⁴[the Motor Vehicles Act, 1939], or any rules made thereunder, declare the certificate of registration of such motor vehicle to be suspended and such certificate shall thereupon be deemed to be suspended until the whole amount of tax and penalty, if any, due in respect of such motor vehicle has been paid.

IV of 1939,

Other
penalties.

14. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punishable with fine which may extend to one hundred rupees, and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to two hundred rupees.

Trial of
offences.

15. No court inferior to that of Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act.

Power of
State
Govern-
ment to
exempt
certain
motor
vehicles
from the
tax.

16. ⁵[The State Government, if it thinks fit so to do in the public interest, may], by notification in the ⁶[Official Gazette], exempt either totally or partially any * * * class of motor vehicles from the tax.

17. [Amendment of the Calcutta Municipal Act, 1923.]—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

¹These words were substituted for the words "annual tax payable" by sec. 9(2) of the Bengal Motor Vehicles Tax (Amendment) Act, 1932 (Ben. Act XIII of 1932).

²These words were added by sec. 9(3), *ibid.*

³Section 13A was inserted by sec 10, *ibid.*

⁴These words were substituted for the words "the Indian Motor Vehicles Act, 1914" by sec. 8 of the Bengal Motor Vehicles Tax (Amendment) Act, 1954 (West Ben. Act XVIII of 1954).

⁵Substituted for the words "The State Government may," by sec. 11(1) of the Bengal Motor Vehicles Tax (Amendment) Act, 1933 (West Ben. Act IV of 1933).

⁶See foot-note 4 on page 231, *ante*.

⁷The words "motor vehicle or" were omitted by sec. 11(2) of the Bengal Motor Vehicles Tax (Amendment) Act, 1933 (West Ben. Act IV of 1933).

of 1932.]

(The Schedule.)

THE SCHEDULE.

(See section 4.)

**DESCRIPTION OF MOTOR VEHICLES AND
RATE OF TAX.**

A. Vehicles for carrying passengers not plying for hire.

I. Vehicles other than omnibuses— Rate of tax payable for the year.

- | | |
|--|---|
| (1) Motor cycles kept for the personal use of owners, not being companies registered under the Companies Act, 1956. | Rs. 24. |
| (2) Motor cycle combinations kept for the personal use of owners, not being companies registered under the Companies Act, 1956. | Rs. 32. |
| (3) Motor cars kept for the personal use of owners, not being companies registered under the Companies Act, 1956, and invalid carriages. | Rs. 18 for every 200 kg. unladen weight or part thereof up to 1,000 kg. plus Rs. 30 for every additional 200 kg. unladen weight or part thereof above 1,000 kg. |
| (4) Motor cars owned by companies registered under the Companies Act, 1956, for carrying employees or other passengers. | Rs. 36 for every 200 kg. unladen weight or part thereof upto 1,000 kg. plus Rs. 60 for every additional 200 kg. unladen weight or part thereof above 1,000 kg. |
| (5) Motor cycles owned by companies registered under the Companies Act, 1956 for carrying employees or other passengers. | Rs. 48. |
| (6) Motor cycle combinations owned by companies registered under the Companies Act, 1956 for carrying employees or other passengers. | Rs. 64. |

¹This Schedule was substituted for the previous Schedule by sec. 12 of the Bengal Motor Vehicles Tax (Amendment) Act, 1963 (West Ben. Act IV of 1963).

(The Schedule.)

II. Omnibuses with seating capacity for— Rate of tax payable for the year.

(a) Not more than 8 ... Rs. 320.

(b) More than 8 but not more than 20. Rs. 360 for 9 *plus* Rs. 40 for every additional seat beyond 9 and up to 20.(c) More than 20 ... Rs. 830 for 21 *plus* Rs. 30 for every additional seat beyond 21 :

Provided that if an omnibus is fitted with solid tyres, there shall be a surcharge *per annum* of 25 *per cent.* of the amount payable under clause (a) or clause (b) or clause (c) above, as the case may be, for such omnibus.

B. Vehicles for carrying passengers plying for hire.

(1) Stage carriages with seating capacity for— Rate of tax payable for the year.

(a) Not less than 8 but not more than 26. Rs. 600 for 8 *plus* Rs. 60 for every additional seat beyond 8 and up to 26.(b) Not less than 27 but not more than 32. Rs. 1,725 for 27 *plus* Rs. 45 for every additional seat beyond 27 and up to 32.(c) 33 or more ... Rs. 1,980 for 33 *plus* Rs. 30 for every additional seat beyond 33 :

Provided that if a Stage carriage is fitted with solid tyres, there shall be a surcharge *per annum* of 25 *per cent.* of the amount payable under clause (a) or clause (b) or clause (c) above, as the case may be, for such Stage carriage.

(2) Vehicles other than Stage carriages with seating capacity for— Rate of tax payable for the year.

(a) not more than 4—

3 wheelers ... Rs. 200.

4 wheelers ... Rs. 300.

(b) more than 4 ... Rs. 360 for 5 *plus* Rs. 60 for every additional seat beyond 5 :

Provided that if a vehicle for carrying passengers plying for hire, which is not a Stage carriage, is fitted with solid tyres, there shall be a surcharge *per annum* of 25 *per cent.* of the amount payable under clause (a) or clause (b) above, as the case may be, for such vehicle.

of 1932.]

(The Schedule.)

C. Vehicles for transport of goods.

Rate of tax payable for the year.

- | | |
|--|---|
| (a) Up to 500 kg. registered laden weight. | Rs. 175. |
| (b) Exceeding 500 kg. but not exceeding 2,000 kg. registered laden weight. | Rs. 175 plus Rs. 20 for every additional 250 kg. or part thereof, above 500 kg. |
| (c) Exceeding 2,000 kg. but not exceeding 4,000 kg. registered laden weight. | Rs. 295 plus Rs. 25 for every additional 250 kg. or part thereof, above 2,000 kg. |
| (d) Exceeding 4,000 kg. but not exceeding 8,000 kg. registered laden weight. | Rs. 495 plus Rs. 30 for every additional 250 kg. or part thereof, above 4,000 kg. |
| (e) Exceeding 8,000 kg. registered laden weight. | Rs. 975 plus Rs. 80 for every additional 250 kg. or part thereof, above 8,000 kg. : |

Provided that, where a vehicle for transport of goods is fitted with solid tyres, there shall be a surcharge *per annum* of 25 *per cent.* of the amount payable under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) above, as the case may be, for such vehicle.

D. Tractors not used solely for agricultural purposes.

Rate of tax payable for the year.

- | | |
|---|--|
| (a) Up to 500 kg. unladen weight. | Rs. 200. |
| (b) Exceeding 500 kg. but not exceeding 2,000 kg. unladen weight. | Rs. 200 plus Rs. 50 for every additional 250 kg. or part thereof, above 500 kg. |
| (c) Exceeding 2,000 kg. but not exceeding 4,000 kg. unladen weight. | Rs. 500 plus Rs. 60 for every additional 250 kg. or part thereof, above 2,000 kg. |
| (d) Exceeding 4,000 kg. but not exceeding 8,000 kg. unladen weight. | Rs. 980 plus Rs. 200 for every additional 250 kg. or part thereof, above 4,000 kg. |
| (e) Exceeding 8,000 kg. unladen weight. | Rs. 4,180 plus Rs. 250 for every additional 250 kg. or part thereof, above 8,000 kg. : |

Provided that, where a tractor is fitted with solid tyres, there shall be a surcharge *per annum* of 25 *per cent.* of the amount payable under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) above, as the case may be, for such tractor.

(The Schedule.)

E. Trailers.

	Rate of tax payable for the year.
(a) Up to 500 kg. registered laden weight.	Rs. 125.
(b) Exceeding 500 kg. but not exceeding 2,000 kg. registered laden weight.	Rs. 125 <i>plus</i> Rs. 15 for every additional 250 kg. or part thereof, above 500 kg.
(c) Exceeding 2,000 kg. but not exceeding 4,000 kg. registered laden weight.	Rs. 215 <i>plus</i> Rs. 20 for every additional 250 kg. or part thereof, above 2,000 kg.
(d) Exceeding 4,000 kg. but not exceeding 8,000 kg. registered laden weight.	Rs. 375 <i>plus</i> Rs. 25 for every additional 250 kg. or part thereof, above 4,000 kg.
(e) Exceeding 8,000 kg. registered laden weight.	Rs. 775 <i>plus</i> Rs. 60 for every additional 250 kg. or part thereof, above 8,000 kg. :

Provided that, where a trailer is fitted with solid tyres, there shall be a surcharge *per annum* of 25 *per cent.* of the amount payable under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) above, as the case may be, for such trailer.

Bengal Act III of 1932

(THE GARDEN REACH MUNICIPALITY ACT 1932.)¹

REPEALED IN PART	..	{ Ben. Act I of 1939.
		{ Ben. Act XVI of 1946.
AMENDED	..	Ben. Act XXIII of 1932.
		{ (a) The Government of India
		(Adaptation of Indian Laws)
ADAPTED	..	Order, 1937.
		{ (b) The Adaptation of Laws
		Order, 1950.

[7th April, 1932.]

Ben. Act III of 1884. *An Act to provide for the exclusion of the Garden Reach area from the limits of the Corporation of Calcutta and to constitute that area as a Municipality under the Bengal Municipal Act, 1884.*

WHEREAS it is expedient to provide for the exclusion of the Garden Reach area from the limits of the Corporation of Calcutta and to constitute that area as a Municipality under the Bengal Municipal Act, 1884 ; Preamble.

It is hereby enacted as follows :—

1. This Act may be called the Garden Reach Municipality Act, 1932. Short title.

2. In this Act, unless there is anything repugnant in the subject or context, Definitions.

- Ben. Act III of 1923.
- (1) "Garden Reach area" means the area which formed the Garden Reach Municipality at the commencement of the Calcutta Municipal Act, 1923, excluding such portions of that area as had then been or have up to the commencement of this Act been acquired by the Commissioners for the Port of Calcutta for the construction of King George's Dock and the works in connection therewith ;
 - (2) "Garden Reach Municipality" means the new Garden Reach Municipality constituted under section 8 ;
 - (3) "Former Garden Reach Municipality" means the Municipality known as the Garden Reach Municipality as it existed at the commencement of the Calcutta Municipal Act, 1923.

3 to 7.—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

¹For Statement of Objects and Reasons, see the Calcutta Gazette of 1931, Part IV, page 74; and for report of the Select Committee—see *ibid.*, page 119; and for Proceedings in Council—see the Bengal Legislative Council Proceedings, Vol. XXXVII, page 228 and Vol. XXXVIII, No. I, page 356.

[Ben. Act III

(Sections 8—12.)

Constitu-
tion of
Garden
Reach
Municipal-
ity.

8. Notwithstanding anything contained in sub-section (2) of section 2 of the Calcutta Municipal Act, 1923¹, or in section 8 of the Bengal Municipal Act, 1884², the ³[State Government] may, by notification in the ⁴[Official Gazette], constitute the Garden Reach area as a Municipality for the purposes of the Bengal Municipal Act, 1884², with effect from such date as may be specified in the notification and thereupon the Bengal Municipal Act, 1884², and the Bengal Food Adulteration Act, 1919, shall notwithstanding the provisions of sub-section (2) of section 2 of the Calcutta Municipal Act, 1923¹, be deemed to be re-enacted and in force in the said area from such date.

Ben. Act
III of
1928.Ben. Act
III of
1884.Ben. Act
VI of
1919.

Such notification shall specify the boundaries of the said Municipality, and the number of the Commissioners, and may further specify whether the name of the Municipality shall or shall not be included in the first or second schedule of the Bengal Municipal Act, 1884².

9. [Provincial Government to appoint first Commissioners and Chairman for two years.]—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

10. [Provincial Government to pass necessary orders for first election of Commissioners.]—Rep. by sec. 3 and the Second sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

11. [First election of Commissioners.]—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

Consequen-
ces of con-
stitution
of Garden
Reach
Municipal-
ity.

12. On the publication of the notification referred to in section 8 the following consequences shall ensue, namely :—

On and from the date specified in the said notification as the date of the constitution of the Garden Reach area as a Municipality—

(1) The orders of the ⁵[State Government] made under sub-section (2) of section 7 shall commence to have effect.

(2) All movable property apportioned by the Committee to the Garden Reach Municipality and all immovable property in Garden Reach area and all interests of whatever nature therein vested in the Corporation of Calcutta shall vest in the Commissioners of the Garden Reach Municipality.

¹The Calcutta Municipal Act, 1928 (Bengal Act III of 1928) was repealed and re-enacted by the Calcutta Municipal Act, 1951 (West Bengal Act XXXIII of 1951).

²The Bengal Municipal Act, 1884 (Ben. Act III of 1884) was repealed and re-enacted by the Bengal Municipal Act, 1932 (Ben. Act XV of 1932) and this reference should now be construed as a reference to the latter Act.

³The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words "Calcutta Gazette," by 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1932.]

(Sections 13—18.)

- (3) All rights and liabilities attaching to the Corporation of Calcutta from contracts, agreements or leases, to which the Corporation of Calcutta is a party in respect of and solely affecting the Garden Reach area shall vest in the Commissioners of the Garden Reach Municipality.

13. [Valuations, etc., under the Calcutta Municipal Act, 1923, to remain in force for one year.]—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

Ben. Act
III of 1884.
Ben. Act
III of 1928.

14. Subject to the provisions of this Act the rules, orders, by-laws, regulations and directions made or issued under the Bengal Municipal Act, 1884¹, and in force in the former Garden Reach Municipality at the commencement of the Calcutta Municipal Act, 1923², shall from the date of the constitution of the Garden Reach Municipality under section 8 be deemed to be revived and in force in the Garden Reach Municipality, until they are superseded.

Revival of rules, etc., of former Garden Reach Municipality.

15. [Saving of power to recover arrears of taxes.]—Rep. by Sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

16. The Corporation of Calcutta shall make over to the Garden Reach Municipality all furniture, records (other than records relating to King George's Dock area and required by the Corporation of Calcutta for their own purpose), movable property and other assets of the former Garden Reach Municipality remaining in the possession of the Corporation, and shall likewise make over all documents and records relating to the Garden Reach area which have come into existence since the commencement of the Calcutta Municipal Act, 1923³.

Restoration to Garden Reach Municipality of movable property and records.

17. Subject to the provisions of the Bengal Municipal Act, 1884¹, it shall be competent for the Commissioners of the Garden Reach Municipality to adopt, amend, vary or rescind anything done or order made by the Corporation of Calcutta in respect of the Garden Reach area.

Power to adopt or alter acts and orders of Corporation of Calcutta.

18. (1) Notwithstanding anything contained in Part III of the Bengal Municipal Act, 1884¹, or elsewhere in that Act, the Commissioners of the Garden Reach Municipality shall annually reserve the sum of one lakh and twenty-five thousand rupees out of the sum of rupees two and a half lakhs to be received annually from the Corporation of Calcutta under section 90A of the Calcutta Municipal Act, 1923³, for expenditure on new works of improvement in the Garden Reach Municipality approved by the [State Government], and meeting of loans charges for such works.

Duty of Commissioners to execute original improvement works.

(2) The [State Government] may make rules for the application of the sum reserved under sub-section (1) and the form of the accounts to be maintained in connection therewith.

¹ See foot-note 2 on page 244, ante.

² See foot-note 1 on page 244, ante.

³ This reference should now be construed as a reference to sec. 128 of the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII of 1951).

⁴ See foot-note 3 on page 244, ante.

[Ben. Act III of 1932.]

(Sections 19, 20 and the Schedule.)

19. [Amendment of the Calcutta Municipal Act, 1923.]—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946.)

General powers of the State Government to remove unforeseen difficulties.

20. If any difficulty arises in carrying out the provisions of this Act the ¹[State Government] may notwithstanding anything contained elsewhere in this Act or in any other Act by order do anything which appears to it to be necessary to give effect to the purposes of this Act.

THE SCHEDULE.

(Amendments to be made in the Calcutta Municipal Act, 1923.)
—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946.)

¹See foot-note 3 on page 244, ante.

Bengal Act V of 1932

[THE ELEPHANTS PRESERVATION (BENGAL AMENDMENT) ACT, 1932.]¹

ADAPTED

...

...

- (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
- (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
- (c) The Adaptation of Laws Order, 1950.

(9th June, 1932.)

An Act to amend the Elephants Preservation Act, 1879, in its application to Bengal.

VI of
1879.

WHEREAS it is expedient to amend the Elephants Preservation Act, 1879, in its application to Bengal in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. This Act may be called the Elephants Preservation (Bengal Amendment) Act, 1932.

Short title.

2. The Elephants Preservation Act, 1879, hereinafter referred to as the said Act, shall, in its application to ²[West Bengal] be amended in the manner hereinafter provided.

Applica-
tion of Act.

3. To section 3 of the said Act, the following clause shall be added, namely :—

Amend-
ment of
section 3
of Act VI
of 1879.

“(d) such elephant is proclaimed under section 5A.”

4. After section 5 of the said Act, the following section shall be inserted, namely :—

New sec-
tion 5A.

“5A. The Collector or Deputy Commissioner of any district, if satisfied that any wild elephant has become dangerous to human life and property may, subject to such rules as may for the time being be in force under this Act, issue a proclamation giving a description of the elephant and offering the reward fixed by the ³[State Government] from time to time for the killing of proclaimed wild elephants to any person who shall kill the elephant described in the proclamation.”

Proclaimed
wild ele-
phants
may be
killed.

5. After clause (d) of section 6 of the said Act the following clause shall be inserted, namely :—

Amend-
ment of
section 6.

“(e) the issue of a proclamation under section 5A.”

¹For Statement of Objects and Reason, see the *Calcutta Gazette* of 1932, Pt. IV, page 80 ; and for Proceedings in Council—see the Bengal Legislative Council Proceedings, Vol. XXXVIII, No. 8, page 804.

²The words “West Bengal” were substituted for the word “Bengal” by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Bengal Act VIII of 1932¹

(THE BENGAL RHINOCEROS PRESERVATION ACT, 1932)².

AMENDED

.. .. Ben. Act II of 1938.

ADAPTED

..

- | | |
|---|---|
| { | (a) The Government of India
(Adaptation of Indian
Laws) Order, 1937. |
| { | (b) The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948. |
| { | (c) The Adaptation of Laws
Order, 1950. |

(23rd June, 1932.)

An Act to provide for the preservation of wild rhinoceros.

WHEREAS it is expedient to provide for the preservation of wild rhinoceros in Bengal ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Rhinoceros Preservation Act, 1932.

Short title
and extent.

(2) It extends to the whole of ³[West Bengal].

2. No person shall kill, injure or capture, or attempt to kill, injure or capture, a wild rhinoceros, unless—

Killing,
injuring
or capturing
of wild
rhinoceros
prohibited.

(a) in defence of himself or some other person ; or

(b) with the permission of the ⁴[State Government] given in a license issued under rules to be made in this behalf by the ⁴[State Government].

3. (1) Whoever in contravention of section 2, kills, injures or captures, or attempts to kill, injure or capture, a wild rhinoceros, shall be punished with imprisonment for a term which may extend to one month or with fine which may extend to one thousand rupees or with both.

Penalty
for contravening
section 2.

(2) Whoever having been convicted of an offence under sub-section (1) of this section, is again convicted of an offence thereunder shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

¹In terms of the provisions of sub-section (3) of section 3 read with Schedule III of the West Bengal Transferred Territories (Assimilation of Laws) Act, 1958 (West Ben. Act XIX of 1958); this Act shall not extend to, or come into force in, the territories transferred from the State of Bihar to the State of West Bengal by sec. 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956 (XL of 1956).

²For Statement of Objects and Reasons. see the *Calcutta Gazette* of 1932, Pt. IV, page 79 ; and for Proceedings in Council—see the Bengal Legislative Council Proceedings, Vol. XXXVIII, No. 8, page 806.

³The words "West Bengal" were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act VIII of 1932.]

(Sections 4—7.)

Rhinoceros
killed or
captured
to be pro-
perty of
Govern-
ment.

Possess-
ing, sel-
ling or
buying of
any part of
rhinoceros
prohibited.

4. Every wild rhinoceros killed or captured ¹[in West Bengal] by any person otherwise than with the permission of the ²[State Government] given under section 2, and all parts of such rhinoceros shall be the property of the ³[State Government].

⁴4A. No person shall without the permission of the ⁴[State Government] possess, sell or buy, or offer to sell or buy, any part of a rhinoceros unless he has reason to believe that such rhinoceros is not the property of the ⁴[State] Government.

Explanation.—The expression “reason to believe” occurring in this section has the meaning assigned to it in section 26 of the Indian Penal Code.

Act XLV
of 1860.

Penalty
for con-
travening
section 4A.

⁵4B. (1) Whoever in contravention of section 4A possesses, sells or buys, or offers to sell or buy, any part of a rhinoceros, shall be punished with fine which may extend to one thousand rupees.

(2) Whoever having been convicted of an offence under sub-section (1) of this section is again convicted of an offence thereunder, shall be punished with fine which may extend to two thousand rupees.

Duty to
report
killing,
injuring
or captur-
ing of
rhinoceros.

5. In the event of any person killing, injuring or capturing a wild rhinoceros in defence of himself or of some other person, he shall within three days of such event report the fact in writing to the officer-in-charge of the nearest police-station or to the Forest Officer or the District or Sub-divisional Magistrate within whose jurisdiction the event took place.

Penalty
for con-
travention
of section
5.

6. Whoever without reasonable excuse omits to make the report referred to in section 5, shall be punished with fine which may extend to five hundred rupees.

Amend-
ment of
Act VIII
of 1912.

7. The Wild Birds and Animals Protection Act, 1912, shall, in its application to “[West Bengal]” be amended as follows, namely—

VIII of
1912.

In clause (ii) of the Schedule to the said Act the word “rhinoceroses,” shall be omitted.

¹The words “in Bengal” were originally inserted by sec. 2 of the Bengal Rhinoceros Preservation (Amendment) Act, 1937 (Ben. Act II of 1938), and thereafter the words “West Bengal” were substituted for the word “Bengal” by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

²See foot-note 4 on page 249, *ante*.

³Sections 4A and 4B were inserted by sec. 3 of the Bengal Rhinoceros Preservation (Amendment) Act, 1937 (Bengal Act II of 1938).

⁴The word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵See foot-note 3 on page 249, *ante*.

Bengal Act X of 1932

(The Bengal Opium Smoking Act, 1932.)¹

ADAPTED

...

...

- (a) The Government of India
(Adaptation of Indian Laws)
Order, 1937.
- (b) The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.
- (c) The Adaptation of Laws
Order, 1950.

(20th October, 1932.)

*An Act to provide for the control of the practice of smoking
prepared opium ;*

WHEREAS it is expedient to control the practice of smoking
prepared opium in Bengal ;

AND WHEREAS the previous sanction of the Governor General
has been obtained under sub-section (3) of section 80A of the
Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Opium Smoking
Act, 1932.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force in such local areas and on such
dates as the ³[State Government] may, by notification⁴, direct,
and the ³[State Government] may, by notification, withdraw
this Act from any local area.

2. In this Act, unless there is anything repugnant in the
subject or context—

(1) “notification” means a notification published in the
⁵[Official Gazette] ;

Short title,
local ex-
tent and
commen-
cement.

Definitions.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1931, Pt. IV, page 54 ; for report of the Select Committee, see *ibid*, 1932, Pt. IV, page 92 ; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XXXVII, page 183, Vol. XXXVIII, No. 1, page 364 and Vol. XXXIX No. 2, page 38.

²The words “West Bengal” were substituted for the word “Bengal” by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴This Act came into force on the 1st June, 1933, except the district of Darjeeling—*vide* notification No. 1753Ex., dated the 28th March, 1933, published in the *Calcutta Gazette*, dated the 6th April, 1933, Pt. I, page 539.

This Act came into force in Darjeeling on the 1st June, 1935—*vide* notification No. 99T.—R. dated the 27th April, 1935, published in the *Calcutta Gazette*, dated the 9th May, 1935, Pt. I, page 839.

⁵These words were substituted for the words “*Calcutta Gazette*” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

5 and 6
Geo. V,
c. 61 ;
6 and 7
Geo. V,
c. 87 ;
9 & 10,
Geo. V,
c. 101.

[Ben. Act X

(Sections 3—5.)

(2) "prepared opium" means any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and includes the dross or other residue remaining after opium is smoked ;

(3) "registered" means registered under the provision of this Act as a smoker of prepared opium ;

(4) "place" includes a building, house, shop, booth, tent, vessel, raft and vehicle and any part thereof ;

(5) "Collector" means—

(i) in the Calcutta district, any person appointed under clause (b) of section 7 of the Bengal Excise Act, 1909, to exercise all the powers and to perform all the duties of the Collector in that district under that Act ; and

Ben. Act
V of 1909.

(ii) elsewhere, the chief officer in charge of the revenue administration of a district.

Smoking
of prepared
opium.

3. Whoever, not being registered, smokes prepared opium shall be punished for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and for every such subsequent offence with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Presump-
tion of
smoking
prepared
opium in
certain
cases.

4. If any person, not being registered, is found in possession of prepared opium or of any apparatus used for the smoking of, or in the manufacture of, prepared opium, it shall be presumed, until the contrary is proved, that such person smokes prepared opium.

Manufac-
ture, pos-
session or
sale of
prepared
opium.

5. Whoever manufactures, possesses, sells, keeps or exposes for sale or attempts to sell any prepared opium, or assists any other person, whether an opium smoker or not, in the manufacture of prepared opium shall be punished with imprisonment which may extend to two years, or with fine which may extend to two thousand rupees, or both.

Exception.—Manufacture or possession for his own use by a registered opium smoker of prepared opium not exceeding one tola in weight or such other lesser quantity as the ¹[State Government] may, by notification, direct, shall not be an offence under this section.

¹ See foot-note 8 on page 251, ante.

of 1932.]

(Sections 6—10.)

6. Whoever opens, keeps or uses any place or permits, any place to be used, for the purpose of enabling two or more persons, whether registered or not, to meet together to smoke prepared opium or has the care or management of, or in any way assists in conducting the business of, any place used or kept for the said purpose shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

Keeping or having charge of place used for smoking prepared opium.

7. If two or more persons, whether registered or not, assembled in any place for the purpose of smoking prepared opium, each such person shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Smoking of prepared opium in assembly of two or more.

8. If any prepared opium or any apparatus used for smoking, or in the manufacture of, prepared opium is found in any place where two or more persons, whether registered or not, are assembled, it shall be presumed until the contrary is proved that the place is used, and that the persons are present in such place, for the purpose of smoking prepared opium.

Presumption from presence of prepared opium, etc., in certain places.

9. The ¹[State Government] may, by notification, make rules providing for—

Power of State Government to make rules for registration of opium smokers.

- (1) the registration of persons who are opium smokers and for their identification, and
- (2) the method of registration, the fee payable for such registration, and the form of the register and the maintenance thereof :

Provided that no person shall be registered as an opium smoker who is below the age of twenty-five years :

Provided also that, subject to such exceptions as the ¹[State Government] may by rule prescribe, no person shall be registered as an opium smoker after a date to be fixed in this behalf, by notification, by the ¹[State Government].

10. If a Collector, a Presidency Magistrate, or a Magistrate of the first class, upon information received and after such inquiry, if any, as he considers necessary, has reason to believe that any place is used for the commission of an offence under this Act, he may, after recording the substance of the information, issue a warrant to an Excise Officer not below the rank of Sub-Inspector authorizing him—

Power to enter and search any place and to seize articles and to arrest persons found in such place.

- (a) to enter such place by day or night with such assistants as such officer may consider necessary ;

¹ See foot-note 3 on page 251, ante.

[Ben. Act X

(Sections 11—13.)

- (b) to search all parts of such place in which such officer has reason to believe that any prepared opium or any apparatus for the smoking of such opium or for the manufacture thereof, is concealed and all or any persons whom he may find in such place ;
- (c) to arrest any person found in such place whom he has reason to believe to be guilty of an offence under this Act ; and
- (d) to seize all prepared opium and apparatus for the smoking or for the manufacture thereof which may be found in such place.

Applica-
tion of the
Code of
Criminal
Procedure,
1898, to
warrants
and search-
es under
section 10.

11. (1) The provisions of the Code of Criminal Procedure, 1898, shall apply to the execution of warrants and to searches made under section 10.

Act V of
1898.

(2) For the purposes of the said provisions of the said Code, a Collector shall be deemed to be a court.

Report to
be made
in case of
arrest or
seizure.

12. Whenever any officer makes an arrest or seizure under this Act, he shall without delay, and in any case within twenty-four hours, forward every person arrested and every thing seized with full particulars of the arrest or seizure to the Collector or to the Magistrate, as the case may be, by whom the warrant was issued. In case of an arrest or seizure under a warrant issued by the Collector the said officer shall, unless the Collector proceeds under section 13, within the aforesaid period of twenty-four hours, forward the person or thing produced before the Collector to a Magistrate having jurisdiction to try the case together with full particulars of the arrest or seizure.

Powers of
Collector
to investi-
gate
offences.

13. (1) A Collector may, without the order of a Magistrate, investigate any offence punishable under this Act which a Court having jurisdiction over the local area within the limits of the Collector's jurisdiction would have power to try.

(2) A Collector may, after recording in writing his reason for suspecting the commission of an offence which he is empowered to investigate, exercise any of the powers conferred upon a police officer making an investigation, or upon an officer in charge of a police-station, by sections 160 to 171 of the Code of Criminal Procedure, 1898.

(3) A Collector may without reference to a Magistrate, and for reasons to be recorded by him in writing, stop further proceedings against any persons concerned, or supposed to be concerned, in any offence which he has investigated.

of 1932.]

(Sections 14—19.)

Act V of
1898.

(4) As soon as an investigation by a Collector has been completed if it appears to him that there is sufficient evidence to justify the forwarding of the accused to a Magistrate, the Collector shall submit a report (which shall, for the purposes of section 190 of the Code of Criminal Procedure, 1898, be deemed to be a police report) to a Magistrate having jurisdiction to try the case and empowered to take cognizance of offences on police reports.

41. Whenever any person arrested under this Act is prepared to furnish bail to the satisfaction of the officer making the arrest, he shall be released on bail, or at the discretion of the officer making the arrest on his own bond.

Bail and
security.

Ben. Act
V of 1909.

15. Every officer mentioned in section 71 of the Bengal Excise Act, 1909, shall be bound to give reasonable aid to an Excise officer in carrying out the provisions of this Act upon request made by such officer.

Aid to
Excise
officer.

16. On the conclusion of a trial for an offence under this Act the Magistrate may order that any prepared opium and any instrument or appliance in respect of, or by means of which such offence has been committed, or appears to have been committed, or any receptacle, package or covering in which such prepared opium, instrument or appliance was found, and any other contents of such receptacle, package or covering shall be confiscated or destroyed.

Power of
Magistrate
to con-
fiscate or
destroy
articles
seized.

17. No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Offences
triable by
Presidency
Magistrate
or Magis-
trate of the
first class.

18. No Magistrate shall take cognizance of any offence under this Act except on the complaint or report of an Excise officer not below the rank of a Sub-Inspector.

Cogni-
zance of
offences.

19. No suit, prosecution or legal proceeding whatever shall lie against any person in respect of anything which is, in good faith, done or intended to be done under this Act.

Indemnity.

Bengal Act XII of 1932

(THE BENGAL SUPPRESSION OF TERRORIST OUTRAGES ACT, 1932.)

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THE SCHEDULE.

Bengal Act XII of 1932

(The Bengal Suppression of Terrorist Outrages Act, 1932.)¹

SUPPLEMENTED	...	...	Act XXIV of 1932.
AMENDED	...	...	<ul style="list-style-type: none"> Ben. Act. XIX of 1932. Ben. Act XXI of 1932. Ben. Act VII of 1934. Ben. Act XVI of 1946.
ADAPTED	...	...	<ul style="list-style-type: none"> (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.

(20th October, 1932.)

An Act to provide for suppressing the terrorist movement in Bengal.

WHEREAS it is expedient to make special provisions for the purpose of suppressing the terrorist movement in Bengal and to provide for the speedier trial of offences committed in furtherance of or in connection with the said movement ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Suppression of Terrorist Outrages Act, 1932.

(2) This section, section 2, ³[Chapters II and III] and the Schedule extend to the whole of ³[West Bengal]. The ⁴[State Government] may, by notification in the ⁵[Official Gazette], extend any or all of the provisions of Chapter I to any area in ³[West Bengal].

Short title,
extent and
duration.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1932, Part IV, page 878 ; for Report of the Select Committee, see *ibid*, page 385 ; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Volume XXXIX, No. 2, page 70 ; *ibid* No. 5, page 331 ; *ibid* No. 6, Pages 24, 96 and 125.

As regards appeal to the High Court at Calcutta from sentences of Special Magistrates under this Act, see section 3 of the Bengal Suppression of Terrorist Outrages (Supplementary) Act, 1932 (XXIV of 1932), and as regards the exclusion of interference of Courts with proceedings under this Act, see section 5 of the said Act.

³These words and figures were substituted for the word and figures "Chapter II" by sec. 22 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

⁴The words "West Bengal" were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁵The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4 (1) of the Adaptation of Laws Order, 1950.

⁶These words were substituted for the words "*Calcutta Gazette*" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act XII*(Chapter I.—Emergency powers.—Secs. 2—4.)*

(3) This Act shall continue in force as long as the Bengal Criminal Law Amendment Act, 1930, remains in force.

Ben. Act
VI of 1930.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "absconder" means a person against whom a warrant is in force on account of an offence under the Indian Penal Code or any other law or in respect of whom an order of arrest has been made under sub-section (1) of section 2¹[or sub-section (1) of section 2A] of the Bengal Criminal Law Amendment Act, 1930 ;

Act XLV
of 1860.

(b) "the Code" means the Code of Criminal Procedure 1898 ;²

Act V of
1898.

(c) "schedule offence" means any offence specified in the Schedule to this Act ;³ [and

(d) "the appropriate Government" means, in relation to any of the matters enumerated in List I in the Seventh Schedule to the Government of India Act, 1935, the Central Government, and in relation to any other matter, the State⁴ Government.]

26 Geo. V,
c. 2.

CHAPTER I.**EMERGENCY POWERS.**

Power to
detain and
question
persons
behaving
suspici-
ously.

3. (1) Any ⁵[servant of the Government] authorised in this behalf by general or special order of the ⁶[State Government] may require any person whom on reasonable grounds he suspects to be acting or about to act in a manner prejudicial to the public safety or peace to give an account of his identity and movements, and may arrest and detain him for a period not exceeding twenty-four hours for the purpose of obtaining and verifying his statements.

(2) An officer making an arrest under this section may in so doing use any means that may be necessary to effect the arrest.

Power to
take
possession
of im-
movable
property.

4. (1) If, in the opinion of the ⁷[State Government], it is necessary to utilize any particular land or building for quarters or offices for public servants, or for the accommodation of

¹These words, figures and letter were inserted by sec. 28 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

²The word "and" was omitted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³The word "and" and clause (d) were inserted, *ibid.*

⁴The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵The words "servant of the Crown" were originally substituted for the words "officer of Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁶See foot-note 4 on page 259, *ante*.

of 1932.]

(Chapter I.—Emergency Powers—Sections 5, 6.)

troops or police or prisoners or persons in custody in places where public lands or buildings are not sufficient for the purpose, the ¹[State Government] may by order in writing, require the occupier or other person in charge of the land or building to place it at the ²[disposal of the State Government] at such time as may be specified in the order, together with the whole or any part specified in the order of any fixtures, fittings, furniture or other things for the time being in the building; and the ¹[State Government] may utilize such land, building, fixtures, fittings, furniture or other things in such manner as it may consider expedient:

Provided that reasonable notice and reasonable facilities for withdrawal shall be given to persons occupying any such building before possession is taken under this section:

Provided also that the land or building—

- (a) shall not be utilized as to wound the religious feelings of the owner or of the persons who were in occupation when possession was taken; and
- (b) shall not, as far as practicable, be so utilized as to interfere with access to any place of worship situated in or contiguous to the land or building.

(2) In this section “building” includes any portion or portions of a building whether separately occupied or not, but does not include any structure set apart for public worship.

5. If, in the opinion of the District Magistrate, it is necessary to utilize any product, article or thing, or any class of product, article or thing, in furtherance of the purposes of this Act, the District Magistrate may, by order in writing, require any owner or person in charge of such product, article or thing to place it at the ³[disposal of the State Government] at such time and place as may be specified in the order; and the District Magistrate may utilize it in such manner as he may consider expedient.

Power to take possession of movable property.

6. The District Magistrate may, by order in writing, prohibit or limit, in such way as he may think expedient for the purposes of this Act, access to any building or place in the possession or under the control ⁴[of the Central or the State Government] or of any railway administration or local authority, or to any building or place in the occupation, whether permanent or otherwise, of ⁴[Government's] Naval, Military or Air forces or of any police force, or to any place in the vicinity of any such building or place.

Power to prohibit or limit access to certain places.

¹ See foot-note 4 on page 259, *ante*.

² The words “disposal of the Provincial Government” were originally substituted for the words “disposal of Government” by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³ The words “of the Central or the Provincial Government” in sections 6 and 11 were originally substituted for the words “of Government” by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴ This word was substituted for the words “His Majesty's” by para. 4(1) of the Adaptation of Laws Order, 1950.

(Chapter I.—Emergency Powers.—Sections 7—10.)

Power to prohibit or regulate traffic.

7. The District Magistrate may, by order in writing, prohibit or regulate, in such way as he may think expedient for the purposes of this Act, traffic over any road, pathway, bridge, water-way or ferry.

Power to regulate means of transport.

8. (1) The District Magistrate may, by order in writing, require any person to make, in such form and within such time and to such authority as may be specified in the order, a return of any vehicles or means of transport owned by him or in his possession or under his control.

(2) The District Magistrate, if, in his opinion, it is expedient for the purposes of this Act, may, by order in writing, require any person owning or having in his possession or under his control any vehicle or means of transport to take such order therewith for such period as may be specified in the order.

Compensation.

9. The Collector shall, on the application of any person who has suffered loss by the exercise of the powers conferred by section 4 or section 5 or sub-section (2) of section 8, award to such person such reasonable compensation as he thinks proper.

Powers regarding arms, ammunition, etc.

10. (1) The District Magistrate may, by order in writing published in such manner as he thinks best adapted for informing the persons concerned,—

(a) prohibit or regulate the purchase, sale or delivery of, or other dealing in, any arms, parts of arms, ammunition or explosive substances ; or

(b) direct that any person owning or having in his possession or under his control any arms, parts of arms, ammunition or explosive substances, shall keep the same in a secure place approved by the District Magistrate or remove them to any place specified in the order.

(2) The District Magistrate may take possession of—

(a) any arms, ammunition or explosives, or

(b) any tools, machinery, implements or other material of any kind, likely, in his opinion, to be utilized, whether by the owner or by any other person, for the commission of any scheduled offence,

and may make such orders as he may think fit for the custody and disposal thereof.

(Chapter I.—Emergency Powers.—Sections 11—11B.)

11. The District Magistrate may require any person residing in the district to assist in the restoration and maintenance of law and order and in the protection of property in the possession or under the control ¹[of the Central or the State Government], or of any railway administration or local authority, in such manner and within such limits as the District Magistrate may specify :

Power to require the assistance of any person.

Provided that before passing any order under this section the District Magistrate shall satisfy himself that such order is not of a harassing or humiliating nature or incompatible with the ability or position in life of the person concerned :

Provided also that no female person shall be required to render any assistance.

²11A. (1) If the District Magistrate is of opinion that any place is being used for the purposes of an association which encourages or aids persons to commit acts of violence or intimidation he may, by order in writing, published in such manner as he thinks best adapted for informing the persons concerned, prohibit the use of such place for such purposes.

Power to prohibit use of places for purposes of certain associations.

(2) In this section and sections 11B and 11C “place” includes a house or building, or part thereof or a tent or vessel.

11B. (1) If, in the opinion of the District Magistrate, any place is being used in contravention of an order published under section 11A, the District Magistrate or any officer authorised in this behalf in writing by the District Magistrate may take possession of such place and evict therefrom any person found therein, and shall forthwith make a report of the taking possession to the ³[State Government] :

Power to take possession of places used for purposes of certain associations.

Provided that where such place contains any apartment occupied by women or children reasonable time and facilities shall be afforded for their withdrawal :

Provided also that if such place is regularly used for the purposes of worship or religious observances reasonable facilities shall be afforded for the continued use of such place for such purposes.

(2) The District Magistrate or officer taking possession of any place under sub-section (1) shall allow reasonable facilities for the removal of any movable property from the said place by any person who applies for, and, in the opinion of the District Magistrate or such officer, is entitled to possession of such property unless such property is liable to forfeiture or seizure under any law for the time being in force.

¹See foot-note 3 on page 261, *ante*.

²Sections 11A to 11C were inserted by sec. 24 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

³See foot-note 4 on page 259, *ante*.

(Chapter I.—Emergency Powers.—Sections IIC—13.)

(3) Where possession of any place has been taken under sub-section (1), the District Magistrate, on the application of any person who has suffered loss thereby, shall, if such person, in the opinion of the District Magistrate, has not used such place for the purposes of, and has no connection with, any association of the nature described in sub-section (1) of section 11A, award to such person, such reasonable compensation as the District Magistrate thinks proper.

(4) Where possession of any place has been taken under sub-section (1), the ¹[State Government] may at any time direct that possession of such place shall be relinquished.

Penalty
for entering
or remain-
ing upon a
place of
which
possession
is taken.

²11C. Any person who enters or remains, without the permission of the District Magistrate or of an officer authorised by him in this behalf, upon a place of which possession is taken under section 11B shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Power
to issue
search-
warrants.

12. The power to issue search-warrants conferred by section 98 of the Code shall be deemed to include a power to issue warrants authorising—

- (a) the search of any place in which any Magistrate mentioned in that section has reason to believe that any scheduled offence or any offence punishable under this Act has been, is being or is about to be committed or that preparation for the commission of any such offence is being made ;
- (b) the seizure in or on any place searched under clause (a) of anything which the officer executing the warrant has reason to believe is being used, or is intended to be used, for any purpose mentioned in that clause ;

and the provisions of the Code shall, so far as may be, apply to searches made under the authority of any warrant issued and to the disposal of any property seized, under this section.

General
power of
search.

13. Any authority on which any power is conferred by or under this Chapter may authorise any person to enter and search any place the search of which such authority has reason to believe to be necessary for the purpose of—

- (a) ascertaining whether any order given, direction made, or condition prescribed in the exercise of such power has been duly complied with ; or
- (b) generally, giving effect to such power or securing compliance with, or giving effect to, any order given, direction made or condition prescribed in the exercise of such power.

¹See foot-note 4 on

, ante.

²See foot-note

, ante.

(Chapter I.—Emergency Powers.—Sections 14—17.)

14. If any person disobeys or neglects to comply with an order made, direction given, or condition prescribed, in accordance with the provisions of this Chapter, the authority which made the order, gave the direction or prescribed the condition may take or cause to be taken such action as it thinks necessary to give effect thereto but shall not in any case inflict more harm than is necessary for such purpose.

Power to give effect to orders if disobeyed.

15. (1) Where it appears to the ¹[State Government] that the inhabitants of any area are concerned in the commission of scheduled offences or are in any way assisting persons in committing such offences, the ¹[State Government] may, by notification in the ²[Official Gazette], impose a collective fine on the inhabitants of that area.

Imposition of collective fine on inhabitants of turbulent areas.

(2) The ¹[State Government] may exempt any person or class or section of such inhabitants from liability to pay any portion of such fine :

Provided that such exemption shall not be based upon communal or racial considerations.

(3) The District Magistrate, after such enquiry as he may deem necessary, shall apportion such fine among the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the District Magistrate's judgment of the respective means of such inhabitants.

(4) The portion of such fine payable by any person may be recovered from him as a fine ³[or as a public demand] under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
III of
1913.

(5) The ¹[State Government] may award compensation out of the proceeds of a fine realised under this section to any person who, in the opinion of the ¹[State Government], has suffered injury to person or property by the unlawful act of the inhabitants of the area.

16. Whoever disobeys or neglects to comply with any order made, direction given, or condition prescribed in accordance with the provisions of this Chapter or impedes the lawful exercise of any power referred to in this Chapter, shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Penalty for disobeying orders under this Chapter.

17. (1) The ¹[State Government] may invest the District Magistrate with the powers of a ¹[State Government] under section 4.

Delegation of powers.

¹See foot-note 4 on page 259, *ante*.

²These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the word "recoverable" by sec. 2 of the Bengal Suppression of Terrorist Outrages (Amendment) Act, 1932 (Ben. Act XIX of 1932).

[Ben. Act XII]

(Chapter I.—Emergency Powers.—Sections 18—20.)

(2) The ¹[State Government] may invest any Subdivisional Magistrate, or any police officer not below the rank of Deputy Superintendent or any military officer not below the rank of Captain with any of the powers of a District Magistrate under this Chapter except powers under ²[section 11A or] sub-section (3) of section 15.

(3) The District Magistrate may, by order in writing, authorise any civil or military officer to exercise in a specified area or in connection with a specified operation or series of operations any of the powers of the District Magistrate under this Chapter or with which the District Magistrate has been invested under sub-section (1).

Power
to make
rules.

18. (1) The ¹[State Government] * * *
may, by notification in the ⁴[*Official Gazette*], make rules—

- (a) to prevent communications with absconders and to secure information of the movements of absconders ;
- (b) to prevent attacks on the persons or property of ⁵[Government] subjects, or to secure information of such attacks and of designs to make such attacks ;
- (c) to secure the safety of ⁶[Government] forces and police ;
- (d) to regulate the exercise of powers conferred by or under this Chapter ;
- (e) to provide for the custody pending production before a Court of prisoners taken in circumstances in which the provisions of the Code cannot be followed without undue inconvenience ;

(f) generally, to carry out the purposes of this Chapter.

(2) In making a rule under this section the ¹[State Government] may provide that any contravention thereof shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

Bar of
jurisdiction.

¹⁹, Except as provided in this Chapter, no proceeding or order purporting to be taken or made under this Chapter shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under this Chapter.

Operation
of other
penal
laws not
barred.

20. Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence punishable under this Chapter.

¹See foot-note 4 on page 259, *ante*.

²These words, figures and letter were inserted by sec. 25 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

³The words "subject to the control of the Governor General in Council" were omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴See foot-note 2 on page 265, *ante*.

⁵See foot-note 4 on page 261, *ante*.

⁶Section 19 shall have effect as if it had been enacted by the Indian Legislature—see section 4 of the Bengal Suppression of Terrorist Outrages (Supplementary) Act, 1932 (XXIV of 1932).

The Bengal Suppression of Terrorist Outrages Act, 1932. 267
of 1932.]

(Chapter. I.—Emergency Powers.—Chapter II.—Special Magistrates.—Sections 21—25.)

21. Notwithstanding anything contained in the Code, any offence punishable under this Chapter shall be cognizable and non-bailable.

Offences under this Chapter to be cognizable and non-bailable.

22. (1) Notwithstanding anything contained in the Code, an offence punishable under sections 160, 186, 187, 188, 189, 227, 228, 505, 506, 507 or 508 of the Indian Penal Code, or under section 17 of the Indian Criminal Law Amendment Act, 1908, shall be cognizable and non-bailable.

Act XLV of 1860, XIV of 1908.

Certain other offences to be cognizable and non-bailable.

(2) Notwithstanding anything contained in section 195 or section 196 of the Code, any Court otherwise competent to take cognizance of an offence punishable under sections 186, 187, 188, 228 or 505 of the Indian Penal Code may take cognizance of such offence upon a police-report being made to it under clause (a) of sub-section (1) of section 173 of the Code, but shall not proceed with the trial unless it has received a complaint in respect of such offence under section 196, as the case may be, and the absence of such complaint shall be reasonable cause, within the meaning of section 344 of the Code, for postponing the commencement of the trial and for remanding the accused.

23. If this Chapter is extended to the Presidency town of Calcutta, "District Magistrate" shall, for the purposes of this Chapter, mean, in that town, the Commissioner of Police.

District Magistrate in Calcutta.

CHAPTER II.

SPECIAL MAGISTRATES.

24. Any Presidency Magistrate or Magistrate of the first class who has exercised powers as such for a period of not less than four years may be invested by the ¹[appropriate Government] with the powers of a Special Magistrate under this Act.

Special Magistrate.

25. ²[(1)] Where, in the opinion of the ¹[appropriate Government], or of the District Magistrate if empowered by the ¹[appropriate Government] in this behalf, there are reasonable grounds for believing that any person has committed a scheduled offence not punishable with death in furtherance of or in connection

Jurisdiction of Special Magistrates.

¹These words were substituted for the words "Local Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

²Section 25 was renumbered as sub-section (1) of section 25 and to this section as so renumbered sub-section (2) was added by sec. 7 of the Bengal Criminal Law (Arms and Explosives) Act, 1932 (Ben. Act XXI of 1932).

(Chapter II.—Special Magistrates.—Sections 26—29.)

with the terrorist movement, or an offence punishable under this Act, ¹[or under section 6 of the Bengal Criminal Law Amendment Act, 1930] the ²[appropriate Government] or District Magistrate, as the case may be, may, by order in writing, direct that such person shall be tried by a Special Magistrate.

Ben. Act
VI of 1930.

³(2) Where, in the opinion of the ²[appropriate Government], there are reasonable grounds for believing that any person has committed, or attempted or conspired to commit, or abetted the commitment of, any offence under the Indian Arms Act, 1878, for the purpose of making, or assisting any person to make unlawful gain by trafficking in arms or ammunition without a license under the said Act, the ²[appropriate Government] may, by order in writing, direct that such person shall be tried by a Special Magistrate.

XI of 1878.

Procedure
of Special
Magis-
trates.

26. (1) In the trial of any case under this Act, a Special Magistrate shall follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates :

Provided that the Special Magistrate shall not be bound to adjourn any trial for any purpose unless such adjournment is, in his opinion, necessary in the interests of justice.

(2) In matters not coming within the scope of sub-section (1), the provisions of the Code, so far as they are not inconsistent with this Chapter, shall apply to the proceedings of a Special Magistrate ; and for the purposes of the said provisions the Special Magistrate shall be deemed to be a Magistrate of the first class.

Sentences
by Special
Magis-
trates.

27. A Special Magistrate may pass any sentence authorised by law, except a sentence of death or of transportation or imprisonment for a term exceeding seven years.

Appeals.

28. (1) Where a Special Magistrate in any district passes a sentence of transportation for a term not exceeding two years or of imprisonment for a term not exceeding four years, or of fine, an appeal shall lie to the Court of Session.

(2) An appeal under sub-section (1) shall be presented within thirty days from the date of the sentence.

Retros-
pective
effect of
directions
under
section 25.

29. No direction shall be made under section 25 for the trial of any person by a Special Magistrate, for an offence for which he was being tried at the commencement of this Act before any Court but, save as aforesaid, a direction under the said section may be made in respect of any person accused of a scheduled offence ⁴[or of an offence referred to in sub-section (2) of section 25], whether such offence was committed before or after the commencement of this Act.

¹These words and figures were inserted by sec. 26 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

²See foot-note 1 on page 267, *ante*.

³See foot-note 2 on page 267, *ante*.

⁴These words, brackets and figures were inserted by sec. 8 of the Bengal Criminal Law (Arms and Explosives) Act, 1932 (Ben. Act XXI of 1932).

of 1932.]

(Chapter II.—Special Magistrates.—Sections 30—32.)

30. If in any trial under this Chapter it is found that the accused person has committed any offence, whether such offence is or is not a scheduled offence ¹[or an offence² referred to in sub-section (2) of section 25], the Special Magistrate may convict such person of such offence and, subject to the provision of section 27, pass any sentence authorised by law for the punishment thereof.

Power to convict for offence proved.

31. A Special Magistrate may, if he thinks fit, order at any stage of a trial that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Special Magistrate as a Court :

Power to exclude persons or public from precincts of Court.

Provided that where in any case the Public Prosecutor or Advocate-General, as the case may be, certifies in writing to the Special Magistrate that it is expedient in the interests of the public peace or safety or of the peace or safety of any of the witnesses in the trial that the public generally should not have access to, or be or remain in, the room or building used by the Special Magistrate as a Court, the Special Magistrate shall order accordingly.

32. (1) Where any accused, in a trial before a Special Magistrate, has, by his voluntary act, rendered himself incapable of appearing before the Magistrate, or resists his production before the Magistrate, or behaves before the Magistrate in a persistently disorderly manner, the Magistrate may, at any stage of the trial, by order in writing made after such inquiry as he may think fit, dispense with the attendance of such accused for such period as he may think fit, and proceed with the trial in the absence of the accused.

Powers of Special Magistrates to deal with refractory accused.

(2) Where a plea is required in answer to a charge from an accused whose attendance has been dispensed with under sub-section (1), such accused shall be deemed not to plead guilty.

(3) An order under sub-section (1) dispensing with the attendance of an accused shall not affect his right of being represented by a pleader at any stage of the trial, or of being present in person if he has become capable of appearing, or appears before the Magistrate and undertakes to behave in an orderly manner.

(4) Notwithstanding anything contained in the Code, no finding, sentence or order passed in a trial before a Special Magistrate shall be held to be illegal by any Court by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (1).

¹ See foot-note 4 on page 268, *ante*.

² The words "or an offence" were substituted for the words "or of an offence" by sec. 2 and the First Schedule to the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

[Ben. Act XII

(Chapter II.—*Special Magistrates.*—Chapter III.—*Possession of certain literature.*—Sections 33—36.)

Special
rule of
evidence.

33. Notwithstanding anything contained in the Indian Evidence Act, 1872, when the statement of any person has been recorded by any Magistrate, such statement may be admitted in evidence in any trial before a Special Magistrate if such person is dead or cannot be found or is incapable of giving evidence and the Special Magistrate is of opinion that such death, disappearance or incapacity has been caused in the interests of the accused.

I of 1872.

Applica-
tion of
ordinary
law.

34. The provisions of the Code and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Chapter, shall apply to all matters connected with, arising from or consequent upon a trial by Special Magistrates.

¹CHAPTER III.

POSSESSION OF CERTAIN LITERATURE.

Penalty
for pos-
session of
certain
prohibited
docu-
ments.

¹35. Whoever knowingly has in his possession any newspaper, book or other document—

(a) the importation of which has been prohibited under the Sea Customs Act, 1878,² or

(b) copies whereof have been declared to be forfeited to ³[Government] under any law for the time being in force,

VIII of
1878.

shall be punishable with imprisonment which may extend to three years or with fine, or with both.

Penalty
for posses-
sion of docu-
ments
inciting to
or encour-
aging the com-
mis-
sion of
certain
offences.

¹36. Whoever has in his possession any newspaper, book or other document which contains any words, signs or visible representations which—

(a) incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder, robbery, dacoity or criminal intimidation, or any offence punishable under the Indian Arms Act, 1878, the Explosive Substances Act, 1908, or under sections 121, 121A, 122, 124, 326, 329, 332, 386, 399, 400, 402, 435, 436, or 440 of the Indian Penal Code, or

XI of 1878.
VI of 1908.
Act XLV
of 1860.

(b) directly or indirectly express approval or admiration of any such offence in a manner likely to encourage the commission of the offence,

shall, unless he proves that he had such newspaper, book or document in his possession—

(i) in circumstances indicating that he did not intend that it should, and did not know that it could, be used for the purpose of disseminating any doctrine tending to further or encourage the terrorist movement; or

¹Chapter III (sections 35 to 39) was inserted by sec. 27 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

²The Sea Customs Act, 1878, has been repealed by the Customs Act, 1962 (52 of 1962).

³This word was substituted for the words "His Majesty" by paragraph 4(1) of the Adaptation of Laws Order, 1960.

(Chapter III.—Possession of certain literature.—Sections
37—39.)

- (ii) for the purposes of *bona fide* research or study not connected with the furtherance or encouragement of the terrorist movement,

be punishable with imprisonment which may extend to three years or with fine, or with both.

XXIII of
1931.

¹³⁷. In sections 35 and 36, "book", "document" and "news-paper" have the same meaning as in clauses (1), (2) and (5) respectively of section 2 of the Indian Press Emergency Powers Act, 1931.

Meaning
of "book",
"docu-
ment"
and "news-
paper".

¹³⁸. (1) No Court shall take cognizance of an offence punishable under section 35 or section 36 except upon complaint made by order of, or under authority from, the ²[appropriate Government] or a District Magistrate empowered by the ³[appropriate Government] in this behalf.

Cognizance
of offences
under
sections 35
and 36.

(2) No complaint shall be made under sub-section (1) unless the ²[appropriate Government] or the District Magistrate, as the case may be,—

- (a) is satisfied that the newspaper, book or document in respect of which the offence is alleged to have been committed contains words, signs or visible representations which tend to further or encourage the terrorist movement or the commission of any offence in connection with that movement ; and
- (b) is of opinion that the person alleged to have committed the offence—
- (i) intended that the newspaper, book or document should, or knew that it could, be used for the purpose of disseminating any doctrine tending to further or encourage the terrorist movement ; or
- (ii) is a person to whom the provisions of sub-section (1) of section 2 of the Bengal Criminal Law Amendment Act, 1930, are applicable.

Ben. Act
VI of
1939.

¹³⁹. Notwithstanding anything contained in the Code, an offence punishable under section 35 or section 36 shall be cognizable and bailable.

Offences
under
section 35
or section
36 to be
cognizable
and
bailable.

¹See foot-note 1 on page, 270 *ante*.

²See foot-note 1 on page 267, *ante*.

[Ben. Act XII of 1932.]

(The Schedule.)

THE SCHEDULE.

[See section 2(c).]

(a) Any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 121, 121A, 122, 123, 148, 212, 216, 216A, 302, 304, 307, 324, 326, 327, 329, 332, 333, 385, 386, 387, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459, 460 and 506 ;

Act XLV
of 1880.

(b) any offence under the Explosive Substances Act, 1908 ;

VI of 1908.

(c) any offence under the Indian Arms Act, 1878 ;

XI of 1878.

(d) any attempt or conspiracy to commit, or any abetment of, any of the above offences.

Bengal Act XV of 1932

(THE BENGAL MUNICIPAL ACT, 1932.)

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- 507. Publication of rules, by-laws, orders and notices.

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Bengal Act XV of 1932¹

(The Bengal Municipal Act, 1932.)²

REPEALED IN PART AND AMENDED	{ Ben. Act IX of 1933.
	{ Ben. Act I of 1939.
	{ Ben. Act XVI of 1946.
REPEALED IN PART	{ West Ben. Act XVIII of 1950.
	{ West Ben. Act XX of 1958.
	{ Ben. Act XI of 1936.
	{ West Ben. Act XI of 1947.
	{ West Ben. Act XXV of 1950.
	{ West Ben. Act XXVIII of 1951.
	{ West Ben. Act X of 1952.
	{ West Ben. Act XXV of 1953.
	{ West Ben. Act XXI of 1954.
AMENDED	{ West Ben. Act XXVII of 1955.
	{ West Ben. Act III of 1960.
	{ West Ben. Act XXV of 1960.
	{ West Ben. Act I of 1961.
	{ West Ben. Act XVIII of 1961.
	{ West Ben. Act. XXII of 1962.
	{ West Ben. Act VI of 1963.
APPLICATION TO CHANDERNAGORE	{ West Ben. Act XVIII of 1955.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, of the 18th March, 1932, and for Proceedings in Council, see the Bengal Legislative Council Proceedings, Vol. XXXVIII, No. 3, pages 844-861 and Vol. XXXIX, No. 2, pages 177-194, 208-253 and 274-309; and Vol. XXXIX, No. 3, pages 30-72, 93-129, 141-189, 204-249, 280-324, and Vol. XXXIX, No. 4, pages 48-85, 94-116, 190-234, 255-316, and Vol. XXXIX, No. 5, pages 39-96, 120-176, 195-254 and Vol. XXXIX, No. 6, pages 113-147.

In terms of the provisions of sub-section (3) of section 8 read with Schedule III of the West Bengal Transferred Territories (Assimilation of Laws) Act, 1958 (West Ben. Act XIX of 1958), this Act shall not extend to, or come into force in, the territories transferred from the State of Bihar to the State of West Bengal by sec. 3 of the Bihar and West Bengal (Transfer of Territories) Act, 1956 (XL of 1956).

²In so far as elections and matters appertaining thereto under this Act are concerned, the relative provisions of this Act may be read with the provisions of the West Bengal Local Bodies (Electoral Offences and Miscellaneous Provisions) Act, 1952 (West Ben. Act X of 1952).

[Ben. Act XV

(The Government of India
(Adaptation of Indian
Laws) Order, 1937.

The India (Adaptation of
Existing Indian Laws)
Order, 1947.

ADAPTED

The Indian Independence
(Adaptation of Bengal
and Punjab Acts)
Order, 1948.

The Adaptation of Laws
Order, 1950.

(1st December, 1932.)

*An Act to consolidate and amend the law relating to municipalities
in Bengal.*

WHEREAS it is expedient to consolidate and amend the law
relating to municipalities in Bengal ;

AND WHEREAS the previous sanction of the Governor General
has been obtained under sub-section (3) of section 80A of the
Government of India Act to the passing of this Act ;

5 & 6, Geo.
v. c. 61 ;
6 & 7 Geo.
v. c. 37 ;
9 & 10 Geo.
v. c. 101.

It is hereby enacted as follows :—

PART I.

CHAPTER I.

PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Bengal Municipal Act,
1932.

(2) It extends¹ to the whole of ²[West Bengal], except
Calcutta as defined by clause (11) of section 3 of the Calcutta
Municipal Act, 1923³.

Ben. Act
III of
1923.

¹Certain provision of the Act were extended to the notified area of Durgapur
under sec. 98B (1)(a) of the Act. *Vide* foot-note under that section.

The provisions of this Act were applied to Chandernagore subject to certain
modifications and exceptions under sec. 6 of the Chandernagore Municipal
Act, 1955 (West Ben. Act XVIII of 1955).

²The words "West Bengal" were substituted for the word "Bengal" by
paragraph (2) of Article 8 of the Indian Independence (Adaptation of Bengal
and Punjab Acts) Order, 1948.

³The Calcutta Municipal Act, 1923 (Ben. Act III of 1923) was repealed
and re-enacted by the Calcutta Municipal Act, 1951 (West Ben. Act XXXIII
of 1951) and this reference should now be construed as a reference to clause
(11) of section 5 of the latter Act.

of 1932.]

(Part I.—Chapter I.—Preliminary.—Sec. 2.)

(3) It shall come into force on such date¹ as the ²[State Government] may, by notification, appoint.

(4) Notwithstanding anything contained in sub-section (2), it shall not take effect in any cantonment or part of a cantonment without the consent of the ³[Central Government] previously obtained.

⁴(5) Notwithstanding anything contained in sub-section (2), the provisions of this Act shall apply⁵ to the district of Darjeeling or any part thereof subject to such exceptions and modifications as the State Government may, by notification, direct.

2. * * * * *

All municipalities constituted, ⁷****limits defined, regulations, measurements and divisions made, licenses and notices issued, taxes, tolls, rates and fees imposed or assessed, budgets passed, assessments made, plans approved, permissions or sanctions granted under the Bengal Municipal Act, 1884, shall, so far as they are in force at the commencement of this Act, be deemed to have been respectively constituted, ⁸*defined, issued, imposed, assessed, passed, made, approved or granted under this Act, and shall (unless previously altered, modified, cancelled, suspended, surrendered or withdrawn, as the case may be, under this Act) remain in force for the period (if any) for which they were so constituted, ⁹*defined, issued, imposed, assessed, passed, made, approved or granted.

Ben. Act
III of 1884.

¹This Act came into force on the 1st December, 1932, *vide* notification No. 5716M., dated the 28th November, 1932, published in the *Calcutta Gazette* of the 1st December, 1932, Pt. I, p. 1942.

²The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1937.

³These words were substituted for the words "Governor General in Council", by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴Sub-section (5) was substituted for the previous sub-section by sec. 2 of the Bengal Municipal (Amendment) Act, 1956 (West Ben. Act XXVII of 1955).

⁵For notifications applying certain provisions of the Act to Darjeeling, *see* notification—

(1) Nos. 3435 E. A., 3436 E. A. and 3437 E. A., dated 28. 2. 36, published in the *Calcutta Gazette* of 1936, Part I, pages 487, 488 and 489, respectively;

(2) No. 2681 E. A., dt. 8. 2. 37, published in the *Calcutta Gazette* of 1937, Part I, page 294;

(3) No. 6599 M., dated 2. 12. 38, published in the *Calcutta Gazette* of 1938, Part I, page 2688;

(4) No. 607 /M. IA—15/55, dated 19. 1. 57, published in the *Calcutta Gazette* of 1957, Part I, page 553.

⁶The words commencing with "The enactments" and ending with "provided that" (which were the opening words of the portion now left of section 2 when it was originally a proviso to the said section), were repealed by section 8 of, and the Second Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁷The words "bodies of Commissioners established" were omitted by sec. 2(i) of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

⁸The word "established" was omitted, *ibid*.

(Part I.—Chapter I.—Preliminary.—Sec. 3.)

- Definitions.** 3. In this Act, unless there is anything repugnant in the subject or context,—
- "Auditor."** ²(a1) "auditor" means an auditor appointed under section 122A and includes any officer authorised by him to perform all or any of the functions of the auditor under Chapter IVA ;
- "Bridge."** (1) "bridge" includes a culvert ;
- "Building."** (2) "building" includes a house, out-house, stable, privy, urinal, shed, hut, wall (other than a boundary wall, not exceeding ten feet in height) and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever, but does not include a *hogla* or other similar kind of temporary shed erected on ceremonial or festive occasions ;
- "Building line."** (3) "building line" means the line up to which the main wall of a building abutting on a street or a projected public street may lawfully extend ;
- "Bustee."** (4) "bustee" means an area containing land occupied by, or for the purposes of, any collection of huts ;
- "Carriage."** (5) "carriage" means any wheeled vehicle, with springs or other appliances acting as springs, which is used for the conveyance of human beings, and includes a *jinrickshaw* ³[and a cycle-rickshaw], but does not include a motor vehicle or a bicycle or a tricycle or a perambulator or other form of vehicle designed for the conveyance of small children ;
- "Cart."** (6) "cart" means any cart, hackery or wheeled vehicle with or without springs, which is not a carriage or a motor vehicle as defined in this section and includes a hand-cart, but does not include the trailer of a motor vehicle, a bicycle or a tricycle or a perambulator or other form of vehicle designed for the conveyance of small children ;
- "Connected-privy."** (7) "connected-privy" means a privy which is directly connected with a sewer ;
- "Conservancy."** (8) "conservancy" means the removal and disposal of sewage, offensive matter and rubbish ;
- "Cubical extent."** (9) the expression "cubical extent", when used with reference to the measurement of a building, means the space contained within the external surfaces of its walls and roof and the upper surface of the floor of its lowest or only storey ;

¹The second proviso to sec. 2, was repealed by section 3 of, and the Second Schedule to, the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²This clause was inserted by sec. 8 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

³These words were inserted by sec. 2(a) of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

of 1932.]

(Part I.—Chapter I.—Preliminary.—Sec. 3.)

(10) "dairy" includes any farm, cattle-shed, cow-house, milk store, milk-shop, or other place from which milk is supplied only on, or for, sale or in which milk is kept, or used for the purposes of sale, or manufacture into butter, *ghee*, cheese, curds, or dried or condensed milk, for sale ;

"Dairy."

and in the case of a dairyman or person selling milk, who does not occupy any premises for the sale of milk, includes the place where he keeps the vessels used by him for the sale of milk, but does not include a shop from which milk is not supplied otherwise than in properly closed and unopened receptacles in which it was delivered to the shop, or a shop, or other place in which milk is sold for consumption on the premises only or a shop or place from which milk is sold or supplied in hermetically closed and unopened receptacles in the same original condition in which it was first received in such shop or place ;

(11) "dangerous disease" means—

"Dangerous disease."

(a) cholera, plague, small-pox, cerebro-spinal meningitis and diphtheria ; and

(b) any other disease which the ¹[State Government] may, by notification, declare to be a dangerous disease for all or any of the purposes of this Act ;

(12) "District Magistrate" means the chief magistrate in a district ²[and includes an Additional District Magistrate] ;

"District Magistrate."

(13) "drain" includes a sewer, a house-drain, a drain of any other description, a tunnel, a culvert, a ditch, a channel and any other device for carrying off sullage, sewage, offensive matter, polluted water, rainwater or sub-soil water ;

"Drain."

(14) "drug" means any substance used as medicine or in the composition or preparation of medicines, whether for internal or external use ³[but does not include a drug within the meaning of clause (b) of section 3 of the Drugs Act, 1940] ;

"Drug."

(15) "dwelling house" means a masonry of framed building constructed, used or adapted to be used wholly or principally for human habitation :

"Dwelling house."

(16) "food" includes every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food, and also includes confectionery, flavouring and colouring matters and spices and condiments ;

"Food."

¹ See foot-note 2 on page 297, *ante*.

² These words were added by sec. 3(2) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

³ These words, figures, brackets and letter were added by sec. 2(b) of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

(Part I.—Chapter I.—Preliminary.—Sec. 3.)

"Framed building."

(17) "framed building" means a building the external walls of which are constructed of timber framing or iron framing, and the stability of which depends on such framing ;

"Habitable room."

(18) "habitable room" means a room constructed or adapted for human habitation ;

"Health officer."

(19) "Health Officer" includes a Medical Officer of Health ;

"Hill municipality."

(20) "hill municipality" means the Darjeeling Municipality and any other municipality, wholly or in part situated in a hilly tract, which the ¹[State Government] may, by notification, declare to be a hill municipality ;

"Holding."

(21) "holding" means land held under one title or agreement and surrounded by one set of boundaries :

Provided that where two or more adjoining holdings form part and parcel of the site or premises of a dwelling house, manufactory, warehouse or place of trade or business, such holdings shall be deemed to be one holding for the purposes of this Act.

Explanation.—Holdings separated by a street or other means of communication shall be deemed to be adjoining within the meaning of this proviso ;

"House."

(22) "house" includes any hut, shop or ware-house ;

"House-gully."

(23) "house-gully" means a passage or strip of land constructed, set apart or utilized for the purpose of serving as a drain or of affording access to a privy, urinal, cesspool or other receptacle for filthy or polluted matter to municipal servants or to persons employed in the cleansing thereof or in the removal of such matter therefrom, and includes the air space above such passage or land ;

"Hut."

(24) "hut" means any building which is constructed principally of wood, bamboo, mud, leaves, grass or thatch, and includes any temporary structure of whatever size or any small building (not being a masonry building) of whatever material made ;

"Inhabitant."

(25) "inhabitant" used with reference to any local area means any person ordinarily residing or carrying on business or owning or occupying immovable property therein ;

"Inhabited room."

(26) "inhabited room" means a room in which some person passes the night, or which is used as a living room, and includes a room with respect to which there is a reasonable presumption (until the contrary is shown) that some person passes the night therein or that it is used as a living room ;

¹See foot-note 2 on page 297, ante.

of 1932.]

(Part I.—Chapter I.—Preliminary.—Sec. 3.)

(27) "land" includes benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth ; "Land."

(28) "living thing" includes any animal, bird or fish ; "Living thing."

(29) "lodging-house" means a house in which pilgrims or other persons are harboured or lodged for hire for a single night or for some other short period and where there is ordinarily community of eating or sleeping accommodation ; "Lodging-house."

(30) "market" includes any place where persons assemble for the sale of any living thing intended for human food or of any article of food ; "Market."

(31) "masonry building" means any building other than a framed building or a hut and includes any structure a substantial part of which is made of masonry or of steel, iron or other metal ; "Masonry building."

¹(31a) "meter" includes and shall be deemed to have always included any apparatus set up or fixed for checking or measuring the consumption of water or gas, as the case may be ; "Meter"

(32) "motor vehicle" includes a vehicle, carriage or other means of conveyance propelled or which may be propelled, on a road by electrical or mechanical power either entirely or partially ; "Motor vehicle."

(33) "municipal drain" means a drain vested in the Commissioners ; "Municipal drain."

(34) "municipality" means any place in which this Act, or any part thereof, is in force ; "Municipality."

(35) "notification" means a notification published in the ²[*Official Gazette*] ; "Notification."

(36) "occupier" means any person for the time being paying, or liable to pay, to the owner the rent or any portion of the rent of the land or building in respect of which the word is used or damages on account of the occupation of such land or building, and includes an owner living in, or otherwise using, his own land or building and also a rent-free tenant ; "Occupier."

(37) "offensive matter" means kitchen or stable refuse, dung, dirt, putrid or putrifying substances and filth of any kind which is not included in sewage as defined in this section ; "Offensive matter."

¹This clause was inserted by section 8(3) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act XV*(Part I.—Chapter I.—Preliminary.—Sec. 3.)***"Owner."**

(38) "owner" includes the person for the time being receiving the rent of any land or building or of any part of any land or building whether on his own account or as agent or trustee for any person or society or any religious or charitable purpose, or as a receiver, or, who would so receive such rent if the land, building or part thereof were let to a tenant ;

"Plinth."

(39) "plinth" means the part of a wall or structure between the ground-level and the level of the lowest floor of a building ;

"Premi."

(40) "premises" includes lands, buildings, vehicles, tents, vans, structures of any kind, streams, lakes, sea-shore, drains, ditches or places open, covered, or enclosed, whether built on or not, and whether public or private, and whether natural or artificial, and whether maintained or not under statutory authority, and any vessel lying in any river, harbour or other water not being a port declared under the Indian Ports Act, 1908 ;

XV of
1908.**"Prescribed."**

(41) "prescribed" means prescribed by this Act or by rules or by-laws made thereunder ;

"Private drain."

(42) "private drain" means any drain which is not a municipal drain as defined in this section ;

"Private street."

(43) "private street" means any street, road, lane, gully, alley, passage or square which is not a public street as defined in this section, but does not include a passage securing access to less than four premises, or a passage provided in effecting the partition of any masonry building amongst joint owners, where such passage is not less than eight feet wide ;

"Public street."

(44) "public street" means any street, road, lane, gully, alley, passage, pathway, square or court whether a thoroughfare or not, over which the public have a right of way, and includes—

- (a) the access or approach to a public ferry,
- (b) the roadway over any public bridge or causeway,
- (c) the footway attached to any such street, public bridge or causeway,
- (d) the passage connecting two public streets, and
- (e) the drains attached to any such street, public bridge or causeway, and, where there is no drain attached to any such street, shall be deemed to include also, unless the contrary is shown, all land up to the boundary wall, *ail*, hedge or pillar of the premises, if any, abutting on the street, or if a street alignment has been fixed, then up to such alignment ;

"Registered medical practitioner."

(45) "registered medical practitioner" means a medical practitioner registered under the Bengal Medical Act, 1914 ;

Ben. Act
VI of 1914

of 1932.]

(Part I.—Chapter I.—Preliminary.—Sec. 3.)

(46) "rubbish" means dust, ashes, broken bricks, mortar, broken glass, and refuse of any kind which is not offensive matter or sewage as defined in this section ; "Rubbish.

(47) "school" includes a *maktab*, a *madrasah* and a *tol* ; "School."

(48) "service-privy" means a fixed privy which is cleansed by hand, but does not include a movable commode ; "Service-privy."

(49) "sewage" means night-soil and other contents of privies, urinals, cesspools or drains, and includes trade effluents and discharges from manufactories of all kinds ;

(50) "slaughter-house" means any place used for the slaughter of cattle, sheep, goats, kids or pigs for the purpose of selling the flesh thereof as meat ; "Slaughter-house."

(51) "street" means a public or private street ; "Street."

(52) "street alignment" means the line dividing the land comprised in and forming part of a street from the adjoining land ; "Street alignment."

(53) "the Commissioners" means the persons for the time being appointed or elected to conduct the affairs of any municipality under this Act ; "The Commissioners."

(54) ¹"[Magistrate]" includes the District Magistrate, the Magistrate in charge of a division of the district in which division a municipality is constituted, and every Magistrate of the first class subordinate to the District Magistrate to whom the District Magistrate may have made over any duties under this Act ; "Magistrate."

(55) "water course" includes any river, stream, or channel whether natural or artificial ; "Water-course."

(56) "water for domestic purposes" shall not be deemed to include a supply— "Water for domestic purposes."

(a) for animals or for washing carriages, where such animals or carriages are kept for sale or hire,

(b) for any trade, manufacture or business,

(c) for fountains,

(d) for watering gardens or streets,

(e) for any ornamental or mechanical purpose,

¹This word was substituted for the words "the Magistrate" by sec. 2 of the Bengal Municipal (Amendment) Act, 1986 (Ben. Act XI of 1986).

(Part I.—Chapter I.—Preliminary.—Part II.—Chapter II.—
The Municipalities.—Secs. 3A—6.)

(f) for building purposes, or

(g) for flushing purposes, except a supply allowed for flushing connected-privies in accordance with a resolution of the Commissioners ;

“Water-works.”

(57) “water-works” includes all lakes, tanks, streams, cisterns, springs, pumps, wells, reservoirs, aqueducts, cuts, sluices, mains, pipes, culverts, engines, hydrants, stand-pipes, conduits, and all machinery, lands, buildings, bridges, and things for supplying or used for supplying water ;

“Year.”

(58) “year” means a year beginning on the first day of April.

Residence within the limits of a municipality.

¹3A. A person shall be deemed to be resident within the limits of a municipality if he maintains a dwelling place within the municipality and occasionally uses such place or any part thereof as a sleeping apartment. A person shall not be deemed to cease to reside within the limits of the municipality merely because of his absence from the dwelling place if he is entitled to return to such place at any time and has not abandoned the intention of returning to such place.

Extent of power conferred on an authority.

4. (1) Where a power is expressed as being conferred on any authority to require a person to do one thing or do another thing, that authority may, in its discretion, require the person to do either thing or, if the nature of the case permits, both of the things, or may give the person the option of doing whichever of the things he chooses.

(2) Where the power is expressed as being conferred on any authority to require a person to do a number of things, that authority may from time to time in its discretion require that person to do any one or more of those things.

Power to define character of building.

5. The Commissioners at a meeting may decide whether any particular building is a masonry building, a framed building, or a hut, or is a lodging-house, as defined in section 3, and their decision shall be final.

PART II.

CHAPTER II.

THE MUNICIPALITIES.

The creation of municipalities.

Declaration of intention to constitute, abolish or alter limits of municipality.

6. (1) The [State Government] may, by notification, and by such other means as it may determine, declare its intention—

(a) to constitute any town, together with, or exclusive of, any railway station, village, land or building in the vicinity of any such town a municipality under this Act ; or

¹Section 3A. was inserted by sec. 4 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²See foot-note 2 on page 297, ante.

of 1932.]

(Part II.—Chapter II.—The Municipalities.—Sec. 6.)

- (b) to withdraw any municipality from the operation of this Act ; or
- (c) to exclude from a municipality any local area comprised therein and defined in the notification ; or
- (d) to include within a municipality any local area contiguous to the same and defined in the notification ; or
- (e) to divide any municipality into two or more municipalities ; or
- (f) to unite two or more municipalities so as to form one municipality ; or
- (g) to define the limits of any municipality ; or
- (h) to revise the boundaries of two or more contiguous municipalities ; or
- (i) to alter the number of Commissioners of a municipality in consideration *inter alia* of the increase or decrease in the population, income, number of voters and commercial and general importance of the place :

Provided that a declaration shall not be made—

- (i) under clause (a), unless the ¹[State Government] is satisfied that three-fourths of the adult male population of the town to which it refers are chiefly employed in pursuits other than agriculture, and that such town contains not less than three thousand inhabitants, and an average number of not less than one thousand inhabitants to the square mile of the area of such town ;
- (ii) under clause (b) and clauses (d) to (g), in the case of any municipality in which the conditions specified in proviso (i) are complied with, except ²[after taking into consideration the views] of the Commissioners of the municipality or each of the municipalities concerned at a meeting ;
- (iii) where any local area is to be excluded from a municipality under clause (c) of which area three-fourths of the adult male population are chiefly employed in pursuits other than agriculture and in which area the average number of inhabitants is not less than one thousand to the square mile, except after consideration of the views of the Commissioners at a meeting ;
- (iv) under clause (d), unless the ¹[State Government] is satisfied that three-fourths of the adult male population of the local area to which it refers are chiefly employed in pursuits other than agriculture ;
- (v) under clause (h), except after consideration of the views of the Commissioners of each of the municipalities concerned at a meeting ;

¹See foot-note 2 on page 297, *ante*.

²These words were substituted for the words "on the recommendation" by sec. 5 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

(Part II.—Chapter II.—The Municipalities.—Secs. 7, 8.)

(vi) where any part of a town or local area affected by any declaration under this section is a cantonment or part of a cantonment ^{1*} *

(2) A copy, ³[both in English and in Bengali], of every notification issued under sub-section (1) shall be posted up in a conspicuous place in the office of the Commissioners of the municipality or municipalities concerned, or, in the case of a notification under clause (a) of that sub-section, in the office of the District Magistrate, and in such other public places as the Commissioners or the District Magistrate, as the case may be, may direct ;

and a public proclamation shall be made by beat of drum throughout the municipality or local area concerned that such copy has been so posted up, and is open to inspection in such office.

Consideration of objections.

7. Any inhabitant of the town or local area, or any rate-payer of the municipality or municipalities in respect of which a notification has been published under section 6 may, if he objects to anything contained in the notification, submit his objections in writing to the ³[State Government] within three months from the date of the publication, and the ³[State Government] shall take his objection into consideration.

Constitution, abolition or alteration of limits of a municipality.

8. When three months from the date of the publication of the notification have expired, and after considering any objections which may be submitted, the ³[State Government] may by notification—

- (a) constitute the town or any specified part thereof a municipality under this Act ; or
- (b) withdraw the whole area comprised in the municipality from the operation of this Act ; or
- (c) include the local area or any part thereof in the municipality or exclude it therefrom ; or
- (d) divide the municipality into two or more municipalities or unite the municipalities, as the case may be ; or
- (e) define the limits of any municipality ; or
- (f) revise the boundaries of two or more contiguous municipalities ; or
- (g) alter the number of Commissioners of a municipality in consideration *inter alia* of the increase or decrease in the population, income, number of voters and commercial and general importance of the place.

Page 306—

For footnote 2, substitute the following footnote, namely :—

³In the application of the Act to the Darjeeling district (except Siliguri sub-division), for the words “both in English and in Bengali” within square brackets, the words “in English, Bengali and such other languages as the State Government may, by notification, specify” shall be substituted, *vide* notification No. 607/M.1A-16/55, dated the 19th January, 1957, published in the *Calcutta Gazette* of the 14th February, 1957, Part I, page 553.

of 1932.]

(Part II.—Chapter II.—The Municipalities.—Secs. 9—13.)

9. Where a dwelling-house, manufactory, ware-house, place of trade or business is situated within the limits of two or more adjacent municipalities the ¹[State Government] may, notwithstanding anything contained in this Act, by notification, declare within which of these municipalities such dwelling-house, manufactory, ware-house, place of trade or business shall be deemed to be included for the purposes of this Act.

Power to include certain dwelling-house, manufactory, etc., within a particular municipality.

10. When any local area is included in a municipality by a notification under clause (c) or clause (f) of section 8 all the provisions of this Act and of any rules, by-laws, notifications, or orders made thereunder, which immediately before such inclusion were in force throughout such municipality, shall be deemed to apply to such area unless the ¹[State Government] in and by the notification otherwise directs.

Application of Act and subsidiary orders in areas included within a municipality.

11. When any municipality is divided into two or more municipalities by a notification under clause (d) of section 8, then, notwithstanding anything contained in this Act, all the provisions of this Act and of any rules, by-laws, notifications, or orders made thereunder, which immediately before such division were in force in any part of the the original municipality, shall be deemed to be in force in the same part of the municipalities formed by the division, unless the ¹[State Government] in and by the notification otherwise directs.

Continuance of Act and subsidiary orders in municipalities formed by division.

12. When the whole area comprised in a municipality is withdrawn from the operation of this Act, or when any part of such area is excluded from the municipality, by a notification under clause (b), (c), or (f) of section 8, this Act, and all rules and by-laws made, orders, directions and notices issued and powers conferred thereunder shall cease to apply to such area or part, as the case may be.

Discontinuance of Act and subsidiary orders in municipalities withdrawn from Act, or in areas excluded.

13. (1) If the circumstances of any municipality are such that, in the opinion of the ¹[State Government] any of the provisions of this Act are unsuited thereto, the ¹[State Government] may, ²[after taking into consideration the views] of the Commissioners at a meeting, by notification, except the municipality or any part of it from the operation of those provisions; and thereupon the said provisions shall not apply to the municipality until applied thereto by notification.

Power to except municipality from provisions of Act unsuited thereto.

(2) While such exception as aforesaid remains in force, the ¹[State Government] may make rules consistent with the provisions of this Act in respect of matters excepted from the operation of the said provisions.

¹ See foot-note 2 on page 297, *ante*.

² These words were substituted for the words "on the recommendation" by sec. 6 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

[Ben. Act XV]

(Part II.—Chapter II.—The Municipalities.—Part III.—
Chapter III.—The Municipal Authorities.—Secs. 14—16.)

Commissioners to erect and maintain boundary marks.

14. The Commissioners of every municipality already existing and of every municipality newly constituted under this Act and of every municipality whose local limits are altered as aforesaid, shall cause to be erected and set up and thereafter maintain substantial boundary-marks defining the limits or the altered limits of the area subject to their authority, as set out in any notification published under this chapter.

PART III.

CHAPTER III.

THE MUNICIPAL AUTHORITIES.

The constitution of the municipality.

Constitution and incorporation of municipality and number of Commissioners.

15. (1) There shall be established for each municipality a body of Commissioners having authority over the municipality and consisting of such number of Commissioners, not being more than thirty nor less than nine, as the ¹[State Government] may specify in the notification constituting the municipality.

(2) Such Commissioners shall be a body corporate by the name of the Municipal Commissioners of the place by reference to which the municipality is known, having perpetual succession and a common seal, and by that name shall sue and be sued.

Commissioners to be elected and appointment of Commissioners in a newly created municipality,

16. ²[The Commissioners shall be elected in the manner prescribed :]

³[Provided that the State Government may appoint all the Commissioners of a municipality newly created and constituted under this Act for a period not exceeding two years from the date of the notification under which such municipality is created and constituted ; and notwithstanding anything contained in this Act, the persons so appointed shall—

(a) if they are not officials, have been resident within the limits of the municipality for at least twelve months immediately preceding the appointment ;

(b) be citizens of India or if they are aliens, be persons exempted from the disabilities imposed by the Bengal (Aliens) Disqualification Act, 1918 ; and

Ben. Act
III of 1918.

¹See foot-note 2 on page 297, *ante*.

²These words and the marginal note were substituted for the words "Three-fourths of the total number of Commissioners shall be elected in the manner prescribed ; the remaining one-fourth shall be appointed by the Provincial Government" and the previous marginal note by sec. 2(a) of the Bengal Municipal (West Bengal Amendment) Act, 1947 (West Ben. Act XI of 1947).

³The first proviso was substituted for the former first proviso by sec. 7 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—Secs. 16A—19.)

(c) be not subject to any of the disqualifications mentioned in section 22.]

¹Provided further that if, in the opinion of the State Government it is necessary so to do in the circumstances of any case, it may, from time to time, by notification specifying the circumstances, extend the period of two years referred to in the foregoing proviso by such further period or periods not exceeding four years in the aggregate beyond the said period of two years as it thinks fit and may appoint new Commissioners in place of any or all of the Commissioners for the time being in office :

²Provided also that the Commissioners of a municipality appointed as aforesaid, shall, notwithstanding the expiry of their term of office or extended term of office, as the case may be, continue to hold office until the first meeting of the elected Commissioners of the municipality at which a quorum is present after a general election.

³16A. No persons other than an official shall be appointed a Commissioner by the State Government unless, irrespective of whether his name is or is not included in the electoral roll, he possesses the necessary qualifications of a voter.

Qualifications of Commissioner appointed by State Government.

17. (Constitution of municipalities included in Schedule II).—Omitted by sec. 3 of the Bengal Municipal (West Bengal Amendment) Act, 1947 (West Ben. Act XI of 1947.)

18. [Special provision in regard to industrial areas.—Omitted by sec. 3 of the Bengal municipal (Amendment) Act, 1962 (West Ben. Act XXII of 1962).]

⁴19.^a (1) The State Government, if it considers necessary may, by order published in the *Official Gazette*, reserve for members of the Scheduled Tribes a number of seats among the seats to which the Commissioners of a municipality are to be elected.

Representation of Scheduled Tribes.

¹This proviso was substituted for the former proviso by sec. 2 of the Bengal Municipal (Amendment) Act, 1961 (West Ben. Act I of 1961).

²This proviso was added by sec. 2 of the Bengal Municipal (Amendment) Act, 1962 (West Ben. Act XXII of 1962).

³Section 16A was inserted by sec. 4, of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Bengal Act XXVIII of 1951).

⁴Section 19 was substituted for the original section by section 2 of the Bengal Municipal (West Bengal Amendment) Act, 1950 (West Ben. Act XXV of 1950).

(Part III.—Chapter III.—The Municipal Authorities.—Secs. 20, 21.)

(2) The number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to which the Commissioners are to be elected as the population of the Scheduled Tribes in the municipality bears to the total population therein.

(3) No member of the Scheduled Tribes for members of which seats are reserved under sub-section (1) shall, if eligible for election, be disqualified from election to any seat not so reserved.

(4) In this section, the expression "Scheduled Tribes" has the same meaning as in clause (25) of article 366 of the Constitution of India.

Page 310—

For section 21, substitute the following section, namely:—

"The electoral roll. 21. (1) So much of the electoral roll for any Assembly constituency for the time being in force as relates to the area comprised within a municipality shall, subject to the provisions of this Act and the rules made thereunder, be the electoral roll for the election of Commissioners in that municipality.

(2) The Magistrate in charge of the sub-division in which a municipality is situated or any other Magistrate of the first or second class authorised by him by writing in this behalf shall, at the time and in the manner prescribed, publish, revise and republish the electoral roll in respect of the municipality.

(3) When a municipality has been divided into wards, the electoral roll shall be divided into separate lists for each ward.

(4) Every person whose name appears in the electoral roll finally published under this section shall be entitled to vote at the election of Commissioners.

(5) The electoral roll shall be made available for purchase by any inhabitant of the municipality at a reasonable price to be fixed by the Magistrate by whom such roll was published under sub-section (2).

(6) The cost of publishing and where the electoral roll is reprinted for the purposes of sub-section (5), the cost of reprinting the electoral roll shall be paid from, and the sale proceeds from the sales of such roll shall be credited to, the Municipal Fund."

(Substituted by West Ben. Act XVI of 1966, section 2.)

[No. 4, dated the 1st May, 1970.]

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—Sec. 22.)

proceeds from the sales of such rolls shall be credited to, the Municipal Fund.

22. (1) A person shall not be eligible for election or appointment as a Commissioner if such person—

General
disquali-
fications
for being
a Com-
missioner.

- (a) has been adjudged by a competent court to be of unsound mind ; or
- (b) is under twenty-one years of age ; or
- (c) is an undischarged insolvent ; or
- (d) being a discharged insolvent, has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part ; or
- (e) is a municipal officer or servant or holds any office of profit under the Commissioners ; or
- (f) has, directly or indirectly, by himself or by his partner or employer or any employe, any share or interest in any contract or employment with, by, or on behalf of, the Commissioners ; ¹[or
- (g) is in arrears for more than three months in payment of any rate or tax :]

Provided that notwithstanding anything contained in clause (f) no person shall be deemed to be disqualified thereunder by reason only of his having a share or interest in—

- (i) any lease, sale or purchase of land or any agreement for the same ; or
- (ii) any agreement for the loan of money or any security for the payment of money only ; or
- (iii) any newspaper in which any advertisement relating to the affairs of the Commissioners is inserted ; or
- (iv) any incorporated ²[or registered] company which contracts with or is employed by the Commissioners.

(2) If any person is or has been convicted by a criminal court of ³[an offence punishable with] transportation or imprisonment for a period of more than six months such person shall not * * * be eligible for election or appointment for five years from the date of expiration of the sentence :

¹The word "or" and clause (g) were inserted by sec. 5 of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

²These words were inserted by sec. 8(1) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

³These words were substituted for the words "any such offence as in the opinion of the State Government involves moral turpitude and which carries with it a sentence of" by sec 8(2)(i), of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

⁴The words "unless the offence of which he was convicted has been pardoned," were omitted by sec. 8(2)(ii), *ibid.*

[Ben. Act XV

(Part III.—Chapter III.—The Municipal Authorities.—Secs. 23, 24.)

Provided that, on application made by a person disqualified under this sub-section, the ¹[State Government] may remove the disqualification by an order made in this behalf ²[and shall do so if in the opinion of the State Government the offence does not involve moral turpitude.]

Page 312—

For sub-section (2) of section 23, substitute the following sub-section, namely:—

“(2) Save as otherwise provided in this Act, any person whose name is included in such part of the electoral roll for any Assembly constituency for the time being in force as relates to the area comprised within a municipality shall be qualified to vote at an election of Commissioners in that municipality.”

(Substituted by West Ben. Act XVI of 1966, section 3.)

[No. 4, dated the 1st May, 1970.]

Qualifications of Commissioners & voters

Page 31

In the
to vote
including

Election of Commissioners.

by West Ben. Act VII of 1969, section 2.)

6, dated the 1st May, 1970.]

24. (1) The provisions of this Act at such time as the ¹[State Government] may prescribe * * *

³Explanation.—In this section the expression ‘first general election’ shall include the first general election held after the commencement of the Bengal Municipal (Amendment) Act, 1962.

West Ben. Act, XXII of 1962.

(2) The ¹[State Government] may issue such orders as it may consider necessary to give effect to the provisions of this Act in

¹See foot-note 2 on page 297, ante.

²These words were added by sec. 8(2) (iii) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

³Substituted for the former sub-section by sec. 5(1) of the Bengal Municipal (Amendment) Act, 1962 (West Ben. Act XXII of 1962).

⁴Inserted by sec. 5(2) of the Bengal Municipal (Amendment) Act, 1962 (West Ben. Act XXII of 1962).

⁵Sub-section (4) was omitted by sec. 5(3), *ibid.*

⁶Sub-section (5) was omitted by sec. 5(4), *ibid.*

⁷The words beginning with “and the Commissioners” and ending with the words and figures “the commencement of the Bengal Municipal (Amendment) Act, 1938”, which were added by sec. 4 of the Bengal Municipal (Amendment) Act, 1938 (Ben. Act IX of 1938), were repealed by sec. 3 and the Second Sch. of the Bengal Repeating and Amending Act, 1946 (Ben. Act XVI of 1946).

⁸This Explanation was added by sec. 6 of the Bengal Municipal (Amendment) Act, 1962 (West Ben. Act XXII of 1962).

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—
Sections 24A, 24B.)

regard to the holding of the first general election referred to in sub-section (1) and in regard to any matter incidental and ancillary thereto.

(3) General elections of Commissioners shall take place¹[before the expiration of the term of office of the Commissioners under sub-section (1) or sub-section (5) of section 56, as the case may be, and] on such days as the District Magistrate may fix for each municipality in his district :

* * * * *

(4) Elections and appointments in respect of casual vacancies shall be held and made at such other times as may be prescribed in accordance with the provisions of this Act.

²24A. (a) If, for any reason, the general election of the Commissioners of a municipality cannot be held within the period referred to in section 24, or

Holding of
general
election in
default of
timely
election or
when
election is
set aside.

(b) if a general election is set aside by a Court otherwise than under the provisions of this Act,
then the State Government shall fix a date for holding a general election or a fresh general election, as the case may be.

³24B. (1) Where the Commissioners elected at a general election are restrained from functioning or the election as a whole is set aside, by order of a Court, anything done or any action taken by the said Commissioners before they are so restrained or before the election is so set aside, as the case may be, shall be deemed to have been validly done or taken.

Validation.

(2) Where the Commissioners have continued in office after the expiry of the term referred to in section 24 on account of—

- (a) a general election not having taken place within the time referred to in that section, or
- (b) a general election having been set aside before the assumption of office by the newly elected Commissioners, or
- (c) the Commissioners elected at a general election not having been able to assume office for any reason, then notwithstanding anything contained in this Act or in any judgment, decree or order of any Court,—

¹These words, figures and brackets were substituted for the words "every fourth year" by sec. 9 (1) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²The proviso to section 24(3) was omitted by sec 9 (2), *ibid*.

³Sec. 24A was inserted by sec. 2(1) of the Bengal municipal (Second Amendment) Act, 1961 (West Ben. Act XVIII of 1961.)

⁴Sec. 24B was inserted with retrospective effect by sec. 2(2), *ibid*.

*(Part III.—Chapter III.—The Municipal Authorities.—
Sections 25, 25A.)*

- (i) the Commissioners so continuing shall be deemed to be and to have been validly continuing in office, and
 - (ii) anything done or any action taken by such Commissioners shall be deemed to be and to have been validly done or taken.
- (3) The Commissioners continuing in office under the provisions of sub-section (2) shall continue to hold office until the first meeting of the Commissioners, elected at a general election, at which a quorum is present.

Deposit
by
candidates
for
election.

25. (1) On or before the date fixed for the nomination of candidates, each candidate for election as a Commissioner shall deposit with the Chairman the sum of rupees one hundred in cash and no candidate shall be deemed to be duly nominated unless such deposit has been made :

Provided that the ¹[State Government] may reduce the amount of deposit to fifty rupees in the case of such municipality as it thinks fit.

(2) If a candidate who has made a deposit under sub-section (1) withdraws his candidature before he is registered as a candidate or within three days of his registration or if his nomination is refused, his deposit shall be returned to him, and if a candidate dies before the poll is held, his deposit shall be returned to his legal representative.

(3) If the number of votes polled by a candidate ²[other than a candidate who is elected,] does not exceed ten *per cent.* of the total number of votes polled the deposit shall be forfeited to the Municipal Fund.

(4) The number of votes polled shall be deemed to be the number of ballot papers, other than spoilt ballot papers counted.

Election of
ineligible
person
to be a
Commis-
sioner.

³25A. (1) Where a person who has been elected to be a Commissioner was not eligible for election on account of a disqualification mentioned in section 22, the election of such person shall be void upon the ¹[State Government] making a declaration to that effect :

Provided that such a declaration shall not be made if the question whether such person was so disqualified was raised in a petition under section 36 and decided on its merits or if such a petition, in which the question is raised, is pending disposal.

¹See foot-note 2 on page 297, *ante*.

²These words were inserted by sec. 6 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³Section 25A was inserted by sec 7, *ibid*.

of 1932.]

*(Part III.—Chapter III.—The Municipal Authorities.—
Sections 26—28.)*

(2) No act done by such Commissioner in execution of the office before the time when the declaration under sub-section (1) is made shall be invalidated by reason of that declaration.

(3) If an election is declared void under sub-section (1) a date shall be fixed by the District Magistrate and the necessary steps taken for holding a fresh election for filling the vacancy, as though it had been a casual vacancy.

26. If the electorate in any municipality fails within the prescribed time to elect the number of Commissioners to be elected in accordance with the provisions of sections 16, ¹* ²* ³* a date shall be fixed by the District Magistrate for another election and in case the electorate still fails to elect the number of Commissioners at such second election the ⁴[State Government] may appoint Commissioners to complete that number. ⁵[Any person so appointed shall be deemed to be duly elected Commissioner.]

On failure of election Commissioners to be appointed by Government.

27. The manner of holding elections shall be prescribed by rules made under this Act:

Voting to be by ballot.

Provided that—

- (i) when a poll is taken at any election of a Commissioner the voting at such election shall be by ballot to be conducted in the manner prescribed, and
- (ii) no person shall be entitled to give more than one vote to any one candidate.

⁶28. (1) Every person who by claiming a qualification which he knows that he does not possess to vote at a municipal election or by using false documents or by a false declaration or by any other deceitful means procures ⁷[or attempts to procure] the improper entry of the name whether of himself or of any other person in the electoral roll, or the improper omission of any name therefrom shall be punished with imprisonment which may extend to three months or with fine or with both.

Offences in respect of electoral list.

(2) Every municipal officer or servant or polling officer who wilfully makes or procures ⁸[or attempts to make or procure any improper entry in the electoral roll or any improper omission therefrom shall be punished with imprisonment which may extend to six months or with fine or with both.

¹The figures "17" were omitted by sec 6(a) of the Bengal Municipal (West Bengal Amendment) Act, 1947 (West Ben. Act XI of 1947).

²The word and figures "or 18" were omitted by sec. 7 of the Bengal Municipal (Amendment) Act, 1962 (West Ben. Act XXII of 1962).

³See foot-note 2 on page 297, *ante*.

⁴These words were added by sec. 6(b) of the Bengal Municipal (West Bengal Amendment) Act, 1947 (West Ben. Act XI of 1947).

⁵The provisions of sections 28 to 34 (both inclusive) shall not apply to cases to which the provisions of the West Bengal Local Bodies (Electoral offences and Miscellaneous Provisions) Act, 1952 (West Ben. Act X of 1952) apply, *vide* section 16 of the said Act.

⁶These words were inserted by sec. 8(i) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

⁷These words were inserted by sec. 8(ii), *ibid*.

(Part III.—Chapter III.—The Municipal Authorities.—
Section 29.)

¹29. (1) A person shall be deemed to have committed a corrupt practice who directly or indirectly, by himself or by any other person—

- (i) induces or attempts to induce by fraud or coercion any voter to give or refrain from giving a vote in favour of any candidate ;
- (ii) threatens any candidate or voter, or any person in whom a candidate or voter is interested with injury of any kind with a view to influence him in any way in connection with the election ;
- (iii) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or of spiritual censure with a view to influence him in any way in connection with the election ;
- (iv) employs, instigates or threatens any form of social boycott of any voter or candidate or of any one in whom such voter or candidate is interested ;
- (v) with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any food or drink, or any money or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person, including a promise of spiritual salvation ;
- (vi) gives or procures the giving of a vote in the name of a voter who is not the person giving such vote ;
- ²(vii) makes any payment or promise of payment to any person on account of the conveyance of any voter to or from any place for the purpose of recording his vote :

Provided that nothing contained in this clause shall prevent a conveyance being hired by a voter or by several voters at their joint cost, for the purpose of conveying him or them to or from the poll ;

- (viii) offers any money or valuable consideration to any person to induce him to withdraw from being a candidate at an election, or, being a candidate accepts any money or valuable consideration so offered ;
- (ix) abets the doing of any of the acts specified in clauses (i) to (viii).

Explanations.—(a) A “promise of individual advantage or profit to a person” includes a promise for the benefit

¹See foot-note 5 on page 315, *ante*.

²For penalty prescribed for being guilty of corrupt practice under this clause, *vide* section 9 of the West Bengal Local Bodies (Electoral Offences and Miscellaneous Provisions) Act, 1952 (West Ben. Act X of 1952).

of 1932.]

*(Part III.—Chapter III.—The Municipal Authorities.—
Sections 30—32.)*

of the person himself, or of any one in whom he is interested, but does not include a promise to further or oppose, or to vote for or against any particular municipal measure or work ;

(b) no agent, clerk, messenger, or other person who may in accordance with rules made by the ¹[State Government] be employed for remuneration by a candidate at an election shall by reason of such employment alone be deemed to come within the provision of this section.

(2) A corrupt practice shall be deemed to have been committed by a candidate if it has been committed with his knowledge and consent, or by a person who is acting under the general or especial authority of such candidate with reference to the election.

(3) Every person who is guilty of a corrupt practice at or in connection with an election held under the provisions of this Act shall be punished which imprisonment with may extend to six months or with fine or with both.

²30. (1) Every person who applies for a ballot paper at an election, having already voted once at the same election and in the same ward or knowing that ³[his name is not included in the electoral roll], shall be punished with imprisonment which may extend to six months or with fine or with both.

Fraudulent voting and personation.

(2) Every person who applies for a ballot paper in the name of any other person, living or dead, or of a fictitious person, shall be punished with the same punishment.

⁴31. Every polling officer, clerk or other person in attendance at the polling station who, except for some purpose authorised by law, communicates to any person any information showing directly or indirectly for which candidate any voter has voted, and every person who by any improper means procures any such information, shall be punished with imprisonment which may extend to six months or with fine or with both.

Infringement of secrecy of election.

⁵32. Every polling officer who permits a person to vote knowing that such person is not entitled to vote, or who prevents a person from voting knowing that such person is entitled to vote, shall be punished with imprisonment which may extend to six months or with fine or with both.

Offences by polling officers.

¹See foot-note 2 on page 297, *ante*.

²See foot-note 5 on page 315, *ante*.

³These words were substituted for the words "he is not qualified to vote thereat" by sec. 9 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

(Part III.—Chapter III.—The Municipal Authorities.—
Sections 33—36.)

Falsifying
result of
election.

¹33. Every person who in the course of electoral operations falsifies or attempts to falsify the record of an election by removing, destroying, altering or fabricating nomination papers or voting papers or by any other act or by any omission shall be punished with imprisonment which may extend to one year or with fine or with both.

Procedure
before
magis-
trate.

¹34. No Magistrate other than a Magistrate of the first class shall take cognizance of any offence punishable under sections 28 to 33 (both inclusive) nor shall any Magistrate take cognizance of such offence,—

- (a) except on the complaint of a person whose name is on the electoral roll, and
- (b) unless such complaint has been made within fourteen days of the date of the declaration of the result of any election to which the offence relates, or within seven days of the date on which the offence is alleged to have been committed, and
- (c) except in the case of an offence punishable under sections 31 to 33 (both inclusive) unless the person complaining shall have deposited fifty rupees.

The deposit mentioned in clause (c) shall be refunded to the complainant if the complaint is found to be true or if for any other reason the Magistrate or the Court of Sessions so directs.

An appeal shall lie to the Court of Sessions from any conviction and sentence passed under sections 28 to 33 (both inclusive).

Order of
disqualifi-
cation.

35. Every person convicted of an offence punishable under sections 28 to 33 (both inclusive) ²[of this Act or of an offence punishable under section 3 or section 9 of the West Bengal Local Bodies (Electoral Offences and Miscellaneous Provisions) Act, 1952] shall be disqualified from voting or from being elected in any election to which this Act applies and from holding the office of Chairman, or Commissioner under this Act for such period, not being less than three nor more than six years from the date of his conviction, as the Court may by order determine.

West Ben.
Act X of
1952.

Proceed-
ings
to set
aside an
election.

36. If the validity of any election of a Commissioner is brought in question by any person qualified to vote at the election to which such question refers, such person may, at any time within ten days after the date of the declaration of the result of the election, file a petition before the District Judge of the district within

¹See foot-note 5 on page 815, *ante*.

²These words, brackets and figures were inserted by sec. 15 of the West Bengal Local Bodies (Electoral Offences and Miscellaneous Provisions) Act, 1952 (West Ben. Act X of 1952).

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—
Sections 37, 38.)

which the election has been or should have been held and shall at the same time deposit fifty rupees in court as security for the costs likely to be incurred :

Provided that the validity of such election shall not be questioned in any such petition—

- (a) on the ground that the name of any person qualified to vote has been omitted from the electoral roll ; or
- (b) on the ground that the name of any person not qualified to vote has been inserted in the electoral roll :

¹[Provided further that if only two candidates contested such election, the petitioner may in addition to calling in question the election of the returned candidate claim that if the election of the returned candidate is set aside the other candidate may be declared duly elected.]

37. (1) Where a petition has been filed under section 36 the District Judge, or any judicial officer subordinate to him and not below the rank of a Subordinate Judge (hereinafter referred to in this chapter as the Judge) to whom the District Judge may transfer the petition, may 'hold such inquiry in accordance with the prescribed procedure as he deems necessary].

Procedure
and powers
of Judge
holding
inquiry.

(2) For the purposes of the said inquiry the Judge may summon and enforce the attendance of witnesses and compel them to give evidence as if he were a civil court, and may also direct by whom the whole or any part of the costs of such inquiry shall be paid and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908.

(3) The Judge may, at any stage of the proceedings, require the petitioner to deposit in court a further sum as the costs incurred or likely to be incurred by any respondent, or to give security, or further security for the payment of the same, and if, within the time fixed by him or within such further time as he may allow, such costs are not deposited or such further security is not furnished, as the case may be, may dismiss the petition.

* * * * *

38. (1) ²[If the Judge, after holding an inquiry under section 37, is satisfied that]—

- (a) a candidate has committed any corrupt practice within the meaning of section 29 for the purpose of the election, or

Setting
aside of
election.

¹The second proviso was added by sec. 10 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²These words were substituted for the original words by sec. 10(i) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³Sub-section (4) was omitted by sec. 10(ii), *ibid*.

⁴Section 38 was renumbered as section 38(1) by sec. 11 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

⁵These words and figures were substituted for the words "The Judge, if he is satisfied that" by sec. 11(1) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

(Part III.—Chapter III.—The Municipal Authorities.—
Section 39.)

(b) the election has not been a free election by reason of the general employment of bribery or undue influence as defined in the Indian Election Offences and Inquiries Act, 1920, or by reason of any form of general intimidation, including any form of social boycott, or

XXXIX
of 1920.

(c) the result of election has been materially affected by any non-compliance with this Act or any rule made under this Act or by any mistake in the forms required thereby or by any error, irregularity, or informality on the part of any officer charged with or carrying out any duty under this Act or rules made under this Act, or

(d) the result of election has been materially affected by improper acceptance or refusal of candidate's nomination,

¹[he] shall set aside the election of such candidate, if he has been elected, and if the election is set aside for any cause which is the result of acts of a candidate or his agents may declare that candidate to be disqualified for the purpose of such fresh election as may be held under section 42.

²[(2) If the petitioner has made a claim under the second proviso of section 36, and the Judge is of opinion that but for the votes obtained by the returned candidate as a result of the acts referred to in clause (a) or clause (b) of sub-section (1), the other candidate would have obtained a majority of the valid votes, he may, after setting aside the election of the returned candidate, declare the other candidate to have been duly elected.]

Scrutiny of
votes and
declara-
tion in
other

39. If, in any case to which section 38 does not apply, the validity of an election is in dispute between two or more candidates, the Judge shall, after a scrutiny and computation of the votes recorded in favour of ³[each] candidate, declare ⁴[as many of the candidates who are found to have obtained consecutively the

¹This word was inserted by sec. 11(2) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²Sub-section (2) was added by sec. 11 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

³This word was substituted for the words "each such" by sec. 12(1) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

⁴These words were substituted for the words "the candidate who is found to have the greatest number of valid votes in his favour" by sec. 12(1) of the Bengal Municipal (Amendment) Act, 1955 (West Bengal Act XXVII of 1955).

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—
Secs. 39A—43.)

largest number of valid votes as there are seats] to have been duly elected. ¹[Every candidate at the election to which the dispute relates shall be deemed to be a party to such dispute] :

Provided that for the purpose of such computation no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person, known or unknown, in giving or obtaining it :

²[Provided further that if after computation there be an equality of votes among two or more candidates and if the number of seats is less than the number of such candidates, the Judge shall select one or more among them, as the case may require, by drawing lots.]

³39A. If the Judge after holding an inquiry under section 37 is satisfied that no ground exists for setting aside the election in the manner provided in section 38 or modifying it in the manner provided in section 39, he shall confirm the election.

Confirmation of election by the Judge.

⁴39B. The decision or order of the Judge under sections 38, 39 or 39A shall be final.

Decision of the Judge to be final on proceedings to set aside election.

40. If the Judge sets aside an election under section 38, he may, if he thinks fit, declare any person by whom a corrupt practice has in his opinion been committed within the meaning of section 29 to be disqualified from being a candidate for election in that or any other municipality for a period not exceeding six years, and the Judge's decision shall be final :

Disqualification of persons from being candidates who commit corrupt practices.

Provided, however, that such person may, by an order of the ⁵[State Government], be at any time relieved from such disqualification.

41. Where a candidate, who has been elected to be a Commissioner, is declared by the Judge not to have been duly elected, acts done by him in execution of the office before the time when the decision is certified to the Commissioners shall not be invalidated by reason of that declaration.

Saving of acts done by a Commissioner before his election is set aside.

42. If an election is set aside by the Judge, a date shall forthwith be fixed and the necessary steps taken for holding a fresh election for filling up the vacancy, as though it has been a casual vacancy.

Fresh election when election is set aside.

43. No election of a Commissioner shall be called in question in any court except under the procedure provided by this Act, and no order passed in any proceeding under sections 36 to

Bar to interference by courts in election matters.

¹These words were inserted by sec. 12(2) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²The second proviso was added by sec. 12(2) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

³Sections 39A and 39B were inserted by sec. 13 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

⁴See foot-note 2 on page 297, ante.

(Part III.—Chapter III.—The Municipal Authorities.—
Sec. 44.)

40 (both inclusive), shall be called in question in any court and no court shall grant an injunction—

- (i) to postpone an election of a Commissioner, or
- (ii) to prohibit a person, declared to have been duly elected under this Act, from taking part in the proceedings of a municipality of which he has been elected a Commissioner, or
- (iii) to prohibit the Commissioners formally elected or appointed for a municipality from entering upon their duties.

Rules.

44. For the purpose of election of Commissioners the ¹[State Government] may, with respect to municipalities generally or to any municipality or class of municipalities, make such ²rules, as it may think fit, to regulate and determine—

(a) the alteration of—

(i) the boundaries of, and

(ii) the number of Commissioners apportioned to, any ward of a municipality ;

(b) the preparation, publication and revision of the electoral roll, the registration of voters and the nomination and registration of candidates ;

2 * * * * *

(e) the dates, time and manner of holding elections, including the manner of giving and recording votes ;

(f) the procedure to be followed by a Judge in inquiring into election petitions ;

(g) the employment of agents, clerks, messengers or other persons by a candidate for the purpose of an election ; ³[and] ;

(h) any other matter relating to elections or election petitions in respect of which this Act makes no provision or in the opinion of the ¹[State Government] insufficient provision. ⁵

¹ See foot-note 2 on page. 297, ante.

² For Rules for the election of Commissioners of Municipalities under the Bengal Municipal Act, 1932, see notification No. 4068M., dated 1.9.34, published in the *Calcutta Gazette* of 1934, Part-I, page 1266, as amended from time to time. For the Chandernagore Municipal Councillors Election Rules, 1958, see notification No. 818/M. 8R-14/57, dated 21. 1. 58, published in the *Calcutta Gazette, Extraordinary* of 1958, Part I, pages 187-202.

For the Chandernagore Municipal (Election of Aldermen) Rules, 1955, see notification No. 10014/M. 8R-26/55, dated 1. 12. 55, published in the *Calcutta Gazette* of 1955, Part I, pages 4911-4912.

³ Clause (c) was omitted by sec. 8 of the Bengal Municipal Act, 1962 (West Ben. XXII of 1962).

⁴ Clause (d) of section 44 was omitted by section 8 of the Bengal Municipal Act, 1950 (West Ben. Act XXV of 1950).
Page 322

*Delete footnote 5.

"and (i) with reference to sub-section (g) of section 28, the minimum amount of rent entitling a person to vote, the submission of returns of tenants by house-holders and such other matters incidental to the house-rent qualification as may be necessary." Vide Revenue Department notification No. 8435E. A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Pt. 1, pages 487-488.

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—Sec. 45.)

¹45. (1) The Commissioners of every municipality shall, at a meeting to be held within ²[thirty] days from the date of the publication in the ³[Official Gazette] of the result of a general election of Commissioners in the municipalities, or ⁴[where Commissioners are appointed within thirty days from the date of

Election of
Chairman.

Page 323—

*Delete footnote 1.

or section 45

"45(1) The [State Government] shall appoint either by name or by official designation the Chairman of the Commissioners of every municipality mentioned in Schedule X to this Act.

(2) The Commissioners of every municipality the name of which is not included in the said schedule shall, at a meeting to be held within twenty-one days from the date of the publication in the [Official Gazette] of the result of a general election of Commissioners in the municipalities, or of the name of the persons appointed to be Commissioners, whichever publication may be later, elect by name in the prescribed manner one of their number to be Chairman.

(3) In the case of a vacancy in the office of the Chairman other than a vacancy occurring under the provisions of section 59, the Commissioners of such municipality shall, at a meeting to be held within twenty-one days from the date of the occurrence of the vacancy, elect by name in the prescribed manner one of their number to fill the vacancy :

Provided that, instead of electing a Chairman under sub-section (2) or sub-section (3), the Commissioners may, within the period prescribed for the election of a Chairman, at a meeting attended by not less than two-thirds of the Commissioners, request the [State Government] to appoint a Chairman and such Chairman shall be appointed by name.

(4) The [State Government] may at any time remove the name of any municipality from Schedule X.

(5) The Chairman of the Commissioners of a municipality mentioned in Schedule X shall be deemed to have vacated office as soon as the name of that municipality is removed from the said Schedule.

(6) If the election of a Commissioner who is also elected Chairman is set aside by the Judge under section 37, the Chairman shall be deemed to have vacated his office from the date of receipt by the Commissioners of such order.

(7) The meeting to be held under sub-section (2) shall be convened by the Chairman of the outgoing body of Commissioners or in the case of a newly created and constituted municipality by the Magistrate, and, if notices of the meeting are not issued within ten days from the date referred to in sub-section (2), may be convened by requisition of any three of the Commissioners. Seven clear days' notice shall be given of the meeting.

(8) The meeting to be held under sub-section (3) shall be convened by the Vice-Chairman and, if notices of the meeting are not issued within ten days from the date referred to in sub-section (3), there shall be a like right of convention thereof by three Commissioners and a like period of notice to that provided by sub-section (7)." Vide Revenue Department notification No. 2435 E.A., dated the 28th February, 1936, published in the Calcutta Gazette of the 5th March, 1936, Pt. I, pages 487-488.

²This word was substituted for the word "twenty-one" by sec. 6(a) of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

³See foot-note 2 on page 301, ante.

⁴These words were substituted for the words "of the names of the persons appointed to be Commissioners, whichever publication may be later" by section 7 of the Bengal Municipal (West Bengal Amendment) Act, 1947 (West Ben. Act XI of 1947).

[Ben. Act XV]

(Part III.—Chapter III.—The Municipal Authorities.—Sec. 46.)

publication of the names of the persons appointed], elect by name in the prescribed manner one of their number to be Chairman :

¹[Provided that the State Government may extend the period of thirty days by such period as it thinks fit.]

(2) In the case of a vacancy in the office of Chairman other than a vacancy occurring under the provisions of section 59 the Commissioners shall at a meeting to be held within ²[thirty] days from the date of the occurrence of the vacancy elect by name in the prescribed manner one of their number to fill the vacancy.

(3) If the election of a Commissioner who is also elected Chairman is set aside by the Judge under section ³[38], the Chairman shall be deemed to have vacated his office from the date of receipt by the Commissioners of such order.

⁴[(4) The meeting to be held under sub-section (1) shall be convened by the Magistrate. Seven clear days' notice shall be given of the meeting.]

(5) The meeting to be held under sub-section (2) shall be convened by the Vice-Chairman and if notices of the meeting are not issued within ten days from the date referred to in sub-section (2) ⁵[may be convened by requisition of any three of the Commissioners. Seven clear days' notice shall be given of the meeting.]

Appoint-
ment of
Chairman
on failure
to elect.

46. (1) If within the period ⁶[fixed by sub-section (1) or sub-section (2) or the period extended under the proviso to sub-section (1)] of section 45 the Commissioners fail to elect a Chairman, the ⁷[State Government] shall appoint by name one of the Commissioners to be Chairman.

(2) The Commissioner so appointed shall ordinarily be a non-official except when the ⁷[State Government] is of opinion that it is necessary to appoint a Government official.

¹This proviso was added by sec. 6(b) of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

²This word was substituted for the word "twenty-one" by sec 6(c), *ibid*.

³These figures was substituted for the figures "37" by sec. 6(d), *ibid*.

⁴Sub-section (4) was substituted for the original sub-section (4) by sec. 6(e), *ibid*.

⁵These words were substituted for the words figures and brackets "there shall be a like right or convention thereof by three Commissioners and a like period of notice to that provided by sub-section (4)" by sec. 6(f), *ibid*.

⁶These words and figures were substituted for the words and figures "of twenty-one days fixed by sub-section (1) or sub-section (2)" by sec. 13 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

⁷See foot-note 2 on page 297, *ante*.

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—Secs. 47—51.)

47. [Status of appointed Chairman.]—Repealed by sec. 5 of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

48. The Commissioners at a meeting shall elect by name in the prescribed manner one of their own number to be Vice-Chairman.

Election of Vice-Chairman.

49. If any dispute arises as to the election of a chairman or Vice-Chairman the matter shall be referred to the ^a[State Government], whose decision shall be final and shall not be questioned in any court.

Dispute as to elections of Chairman or Vice-Chairman.

50. The names of all persons elected or appointed as Chairman, Vice-Chairman or Commissioners shall be published in the ^a[Official Gazette].

Publication of elections and of nominations.

51. (1) ^a[Save as hereinafter otherwise provided, the Chairman] shall for the transaction of the business connected with this Act, or for the purpose of making any order authorised thereby, exercise all the powers vested by this Act in the Commissioners and, where by any other law power is vested in the Commissioners for any purpose, the Chairman may transact any business or make any order authorised by that law in the exercise of that power, unless it is otherwise expressly provided in that law :

Powers of Chairman.

Provided that the Chairman shall not act in opposition to, or in contravention of, any order of the Commissioners at a meeting or exercise any power which is directed to be exercised by the Commissioners at a meeting.

^a[(2) In any municipality where an Executive Officer is appointed under section 66 or sub-section (1) or sub-section (4) of section 67, the Commissioners at a meeting may, notwithstanding anything contained in sub-section (1), delegate to him all or any of the powers of the Commissioners and shall, if required by the State Government to do so, delegate to him such powers of

¹In the application of this Act to the district of Darjeeling after section 48, the following section shall be inserted, namely :—

"48A. If a Chairman or a Commissioner is appointed by official designation, the person for the time being holding the office shall be the Chairman or the Commissioner, as the case may be" *Vide* Revenue Department notification No. 8495E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Pt. I, pages 487-88.

^aSee foot-note 2 on page 297, *ante*.

^aSee foot-note 2 on page 301, *ante*.

^aThese words were substituted for the words "The Chairman" by sec. 14(1) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

^aSub-section (2) was substituted for the original sub-section 2 by section 14(2), *ibid*.

(Part III.—Chapter III.—The Municipal Authorities.—
Secs. 52—55.)

the Commissioners as the State Government may direct, and upon such delegation the Commissioners shall cease to exercise the powers so delegated to the Executive Officer.]

Delegation
of duties
or powers
to Vice-
Chairman
or certain
officers.

52. The Commissioners at a meeting specially convened for the purpose or the Chairman may delegate to the Vice-Chairman or to the holder of any of the other offices referred to in subsection (1) of section 73, all or any of the duties or powers of a Chairman as defined in this Act, and may at any time in the like manner withdraw or modify the same :

Provided that in the case of a Chairman appointed under section 46 the delegation of duties or powers to the Vice-Chairman by the Commissioners shall be subject to the approval of the ¹[State Government] :

Provided also that nothing done by the Vice-Chairman which might have been done under the authority of a delegation from the Chairman shall be invalid for want of or defect in such delegation if it be done with the express or implied consent of the Chairman and subsequently approved by the Commissioners at a meeting.

Delegation
of powers
by the
Executive
Officer.

53. The Executive Officer may with the approval of the Commissioners at a meeting delegate all or any of his powers to the holder of any office under the Commissioners.

Duties of
Vice-
Chairman.

54. The Vice-Chairman—

- (a) shall, during a vacancy in the office of Chairman or the incapacity or temporary absence of the Chairman, perform any duty and, when occasion arises, exercise any power of the Chairman,
- (b) shall, at any time, perform any duty and exercise, when occasion arises, any power delegated to him under section 52.

Grant of
leave to
Chairman
and Vice-
Chairman.

55. (1) The Commissioners at a meeting may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in any one year.

(2) If the Chairman or Vice-Chairman is absent from his duties during any one year for more than the three months allowable by way of leave under this section, he shall be declared by the ¹[State Government] to have vacated his office unless such absence is sanctioned by the ¹[State Government].

¹See foot-note 2 on page 297, ante.

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—
Sec. 56.)

56. (1) Except as otherwise provided in this Act—

(a) a Commissioner, ¹* * * shall hold office for four years commencing from the date of the first meeting of the newly-formed body of Commissioners after a general election of Commissioners in the municipality at which a quorum is present ;

(b) an elected Chairman and a Vice-Chairman shall, subject to the provisions of section 59, hold office for four years from the date of his election and ²[an appointed Chairman shall subject to the provisions of section 59 hold office for such period not exceeding four years] as the ³[State Government] may in each case determine.

Tenure of
office of
Chairman,
Vice-
Chairman
and Com-
missioners.

(2) The term of four years referred to in sub-section (1) ⁴[or if the said term is extended under sub-section (5) then the term as so extended,] shall be held to include any period which may elapse between the expiry of the ⁵[said term or of the extended term, as the case may be,] and the date of the first meeting of the newly-formed body of Commissioners at which a quorum is present.

(3) A person ceasing to be a Commissioner or to be Chairman or Vice-Chairman by reason of the expiry of his term of office shall, if otherwise qualified, be eligible for re-election or re-appointment ⁶[for the purpose of section 26].

(4) If the ⁷[State Government] in the exercise of its powers under clause (i) of sub-section (1) of section 6 increases the number of Commissioners of any municipality at any time before the expiry of the term of four years, provided by clause (a) of sub-section (1), the term of office of the Commissioners thus added shall not extend beyond the said term of four years as above defined.

(5) The ⁸[State Government] may extend the term of office of the Commissioners of a municipality ⁹[for any period or periods not exceeding two years in aggregate] beyond the term

¹The words "whether elected or appointed" were omitted by sec. 8(a), of the Bengal Municipal (West Bengal Amendment) Act, 1947 (West Ben. Act

Page 327—

*Delete footnote 2.

ling for the words
subject to the pro-
viding four years"

the words and figures "an appointed Chairman shall subject to the provisions of sub-section (5) of section 45 hold office for such period," shall be substituted, *vide* Revenue Department notification No. 3485E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Pt. I, pages 487-488.

²See foot-note 2 on page 297, *ante*.

³These words were inserted by sec. 8(a) of the Bengal Municipal (Second Amendment) Act, 1961 (West Ben. Act XVIII of 1961).

⁴Substituted for the words "said four years" by sec. 8(b), *ibid*.

⁵These words and figures were added by sec. 8(b) of the Bengal Municipal (West Bengal Amendment) Act, 1947 (West Ben. Act XI of 1947).

⁶Substituted with retrospective effect for the words "for a period not exceeding one year" by sec. 2 of the Bengal Municipal (Amendment) Act, 1960 (West Ben. Act III of 1960).

[Ben. Act XV

(Part III.—Chapter III.—The Municipal Authorities.—Sec. 57.)

of four years, provided by clause (a) of sub-section (1), if in special circumstances (to be specified in the notification) it so thinks fit.

Oath of
allegiance
to be
taken by
Commis-
sioners.

57. (1) Notwithstanding anything contained in the Indian Oaths Act, 1873, every person who is elected or appointed to be a Commissioner, number meeting given, substitution

X of 1873.

In sub-section (1) of section 57, for the words and brackets "in the presence of the other Commissioners (or such number of them as would be sufficient to form a quorum at a meeting) assembled for a meeting of which notice has been given", substitute the following words, namely:—

"I, before the Chairman, the Vice-Chairman, the District Magistrate, the Magistrate in charge of the sub-division in which the municipality is situated or an officer of the State Government authorised in this behalf by the District Magistrate or if the District Magistrate so directs, by the Magistrate in charge of the sub-division".

(2) A Commissioner which is down in sub-section (1) shall cease to hold his office and his seat shall be deemed to have become vacant.

(Substituted by West Ben. Act XXIII of 1965, section 2.)

[No. 2, dated the 1st May, 1970.]

(3) Notwithstanding anything contained in the Indian Oaths Act, 1873, every elected or appointed Commissioner of a municipality holding office at the commencement of this Act shall, at the first meeting of the Commissioners which he attends after the commencement of this Act, make an oath or affirmation of his allegiance to the Government in the following form, namely:—

"I, A. B., a Commissioner of this municipality, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to [the Constitution of India as by law established] and that I will faithfully discharge the duties of a Commissioner of this municipality."

¹These words were inserted by section 4(a) of the Bengal Municipal (West Bengal Amendment) Act, 1950 (West Ben. Act XXV of 1950).

²These words were substituted for the words "at a meeting of the Commissioners" by sec. 14 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³These words were substituted for the word "Crown" by paragraph (1) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁴These words and brackets were substituted for the words and brackets "solemnly swear (or affirm) that I will be faithful and bear true allegiance" by section 4(b) of the Bengal Municipal (West Bengal Amendment) Act, 1950 (West Ben. Act XXV of 1950).

⁵These words were substituted for the words "His Majesty the King-Emperor of India, His heirs and successors" by paragraph (2) of Article 3 of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁶The word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—Sec. 57.)

(4) Any elected or appointed Commissioner holding office at the commencement of this Act who fails to make, within three months from the commencement of this Act, the oath or affirmation laid down in sub-section (3) shall cease to hold his office and his seat shall be deemed to have become vacant.

Ben. Act
IX of
1933.

¹(5) Where any person has failed whether before or after the commencement of the Bengal Municipal (Amendment) Act, 1933, to make the oath or affirmation of allegiance or has made such oath or affirmation otherwise than in accordance with the provisions of this section and the ²[State Government] is satisfied that the failure of such person to comply with the provisions of this section was due to inadvertence or misapprehension or that such person is an alien exempted from the disabilities imposed by the Bengal (Aliens) Disqualification Act, 1918, in respect of election or appointment as a Commissioner, the ³[State Government] may declare that the failure of such person to comply with the provisions of this section is condoned.

Ben. Act
III of
1918.

¹(6) When a declaration has been made by the ²[State Government] under sub-section (5) in respect of any person, such person shall be deemed to have continued notwithstanding his default to hold his office, and all acts done by him or by the Commissioners or by any municipal officer or servant before the date of the said declaration shall be and shall be deemed to have always been as valid and lawful as if the person in respect of whom the declaration has been made had made the oath or affirmation of allegiance in accordance with the provisions of this section.

¹(7) Where all the Commissioners of a municipality have failed to make the oath or affirmation under this section or where the number of Commissioners who have made the oath or affirmation is insufficient to allow of a quorum being formed under section 82 and the ²[State Government] is not satisfied that the failure of the Commissioners who have failed to make the oath or affirmation was due to inadvertence or misapprehension, the ³[State Government] may, by an order published in the ⁴[Official Gazette], supersede the Commissioners of the municipality for a period to be specified in the order and thereupon the consequences specified in clauses (b) and (c) of sub-section (1) of section 554 shall ensue. Thereafter the ⁵[State Government] shall, as soon as may be convenient, reconstitute the Commissioners of the municipality by a fresh general election * * * and the persons who failed to make the oath or affirmation shall not be deemed disqualified for election or appointment ⁶[under section 26].

¹Sub-sections (5), (6) and (7) were added by sec. 6 of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

²See foot-note 2 on page 297, *ante*.

³See foot-note 2 on page 301, *ante*.

⁴The words "and fresh appointment" were omitted by sec. 9(a)(i) of the Bengal Municipal (West Bengal Amendment) Act, 1947 (West Bengal Act XI of 1947).

⁵These words and figures were added by sec. 9(a)(ii), *ibid*.

(Part III.—Chapter III.—The Municipal Authorities.—
Secs. 58, 59).

Filling of
vacancies
and
tenure of
office of
person
filling
vacancy.

58. (1) If the election of any Commissioner ¹[is set aside] under the provisions of section 38 and the Judge does not declare that person to be disqualified for the purpose of such fresh election as may be held under section 42, the said person shall be eligible for re-election in the vacancy so caused.

(2) If the election of any Commissioner is set aside under the provisions of sections 38 and the Judge declares that person to be disqualified for the purpose of such fresh election as may be held under section 42, or if any Commissioner, Chairman or Vice-Chairman is by reason of his death, resignation or removal or by reason of his seat becoming vacant under the provisions of section 55 or section 57 unable to complete his full term of office, or if a Chairman or Vice-Chairman is granted leave under section 55 the vacancy so caused shall be filled by the appointment or election, as the case may be, of another person.

(3) The person elected or appointed to a vacancy referred to in sub-section (1) or sub-section (2) shall fill such vacancy for the unexpired remainder of the term for which such Commissioner, Chairman or Vice-Chairman would otherwise have continued in office or during his absence on leave, as the case may be.

Vacation
of office
by Chair-
man and
Vice-
Chairman
after
general
election.

59. (1) Notwithstanding anything contained in section 56, ²[a Chairman] and a Vice-Chairman shall be deemed to have vacated office as soon as the newly-formed body of Commissioners has assembled at the meeting held under the provisions of ³[sub-section (1) of section 45].

²(2) The Commissioners assembled shall thereupon appoint one of their number to preside at the meeting and shall proceed to elect a Chairman and a Vice-Chairman :

Provided that if the Commissioners at the meeting fail to elect a Chairman, the Chairman of the outgoing body of Commissioners shall thereafter resume office and continue to hold the same until the new Chairman is elected or appointed.

¹These words were substituted for the words "is not set aside" by sec. 7 of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

*Delete footnotes 2 and 3.

Memorandum No. 3455 E.A., dated the 25th February, 1930, published in the Calcutta Gazette, of the 5th March, 1936, part I, pages 487-488.

²In the application of this Act to the district of Darjeeling for sub-section (2) the following sub-section shall be substituted, namely :—

³(2) The Commissioners assembled shall thereupon appoint one of their number to preside at the meeting and shall take such steps as may be necessary for the election or appointment of the Chairman and for the election of the Vice-Chairman, in accordance with the provisions of sections 45 and 48.", *ibid*,

section
n" shall
be word
partment

of 1932.]

*(Part III.—Chapter III.—The Municipal Authorities.—
Secs. 60, 61.)*

60. (1) An appointed Chairman may resign by notifying in writing his intention to do so to the ¹[State Government], and on such resignation being accepted shall be deemed to have vacated his office.

Resignation of Chairman, Vice-Chairman or Commissioner.

(2) An elected Chairman may resign by laying notice in writing of his intention to do so before the Commissioners at a meeting.

(3) A Vice-Chairman or Commissioner may resign by notifying his intention to do so to the Chairman, who shall forthwith lay such notice before the Commissioners at a meeting.

(4) On a resignation under sub-section (2) or sub-section (3) being accepted by the Commissioners at a meeting, the Chairman, Vice-Chairman or Commissioner, as the case may be, shall be deemed to have vacated his office.

61. (1) The ¹[State Government] may at any time remove a Chairman appointed by it.

Removal of Chairman and Vice-Chairman.

²(2) An elected Chairman or Vice-Chairman may at any time be removed from his office by resolution of the Commissioners carried in this behalf by the votes of not less than two-thirds of the total number of Commissioners holding office for the time being, at a meeting specially convened for the purpose and according to the procedure laid down in sub-section (3) :

Provided that if the number of Commissioners who have given their votes in favour of such resolution is less than two-thirds of the total number of Commissioners holding office for the time being but more than half the number of such Commissioners, the State Government may, by order, remove the Chairman or the Vice-Chairman, as the case may be, from his office.

³(3) Written notice of the intention to move the resolution signed by not less than one-third of the total number of Commissioners holding office for the time being together with a copy of the resolution shall be delivered to the District Magistrate and the District Magistrate shall, notwithstanding anything contained in section 78, convene a special meeting of the Commissioners for the consideration of the resolution, to be held at the municipal office on a date not later than thirty days from the date on which the notice was delivered to him, and shall give not less than fifteen clear days' notice of the meeting to the Commissioners.

¹See foot-note 2 on page 297, *ante*.

²Sub-section (2) was substituted for the original sub-section 2 by sec. 15(1) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XVII of 1955).

³Sub-sections (3), (4), (5) and (6) were added by sec. 15(2), *ibid*.

(Part III.—Chapter III.—The Municipal Authorities—Sec. 62.)

¹(4) Notwithstanding anything contained in section 79, the District Magistrate or any other Magistrate of the first class authorised by the District Magistrate in this behalf shall preside at such special meeting and no other person shall preside thereat.

¹(5) If the resolution after being put to vote is not carried by the votes of more than one-half of the total number of Commissioners holding office for the time being, no notice of any subsequent resolution for the removal of the same Chairman or Vice-Chairman shall be given until after the expiry of six months from the date of the meeting referred to in sub-section (3).

¹(6) If, within fifteen days of the receipt of the notice of the intention to move the resolution, the District Magistrate fails to give notice convening a special meeting as aforesaid, any three of the Commissioners, who had signed such notice, may, within seven days from the expiry of the period of fifteen days heretofore referred in this sub-section, call such special meeting giving at least seven clear days' notice together with a copy of the resolution to the Commissioners and notwithstanding anything contained in section 79, the Commissioners shall elect one of their number to preside at such special meeting.

Removal
of Com-
missioners.

62. (1) The ²[State Government] may remove an elected Commissioner on the ground of misconduct in the discharge of his duties if the removal is recommended by a resolution of the Commissioners passed at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the whole number of Commissioners of the municipality.

(2) The ²[State Government] may remove any Commissioner—

- (a) if he refuses to act or becomes incapable of acting, or is declared insolvent, or if after his election as Commissioner, he is convicted of an offence which in the opinion of the ²[State Government] involves moral turpitude ; or
- (b) if he has been declared by the ²[State Government] by notification issued after due inquiry to have violated his oath of allegiance ; or
- (c) if he absents himself from meetings of the Commissioners for three months continuously without having obtained permission from the Commissioners at a meeting ; or
- (d) if he, being a legal practitioner without the consent of the Chairman, acts or appears in any suit or other proceeding, on behalf of any other person, against the Commissioners, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Commissioners ; or

¹See foot-note 8 on page 381, *ante*.

²See foot-note 1 on page 297, *ante*.

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—Sec. 62.)

(e) if he knowingly acquires or continues to have directly or indirectly by himself or his partner, any share or interest in any contract or employment with, by or on behalf of the Commissioners or holds any office of profit under the Commissioners. If he contravenes this clause he shall also be liable to be punished as provided in section 500 ; or

(f) if he is in arrears for more than ¹[six months] in payment of rates and taxes and the ²[State Government] after due inquiry is of opinion that the Commissioner has no reasonable cause for default.

*Explanation to clause (b).—*A person who by constitutional means endeavours to make changes in the constitution shall not be deemed to have thereby violated his oath of allegiance.

(3) Before removing a Commissioner under sub-section (1) or sub-section (2) the ³[State Government] shall allow the Commissioner concerned an opportunity of being heard.

(4) All acts and proceedings of any Commissioner removed under sub-section (1) or sub-section (2) shall, if done previously to such removal, be valid and effectual to all intents and purposes.

(5) Notwithstanding anything contained in clause (e) of sub-section (2) no person shall be deemed to be disqualified thereunder by reason only—

(a) of his having a share or interest in—

(i) a contract entered into between the Commissioners and any incorporated or registered company of which such Commissioner is a member or share-holder ; or

(ii) any lease, or purchase of land, or any agreement for the same ; or

(iii) any agreement for the loan of money, or any security for the payment of money only ; or

(iv) any newspapers in which any advertisement relating to the affairs of the municipality is inserted ;

(b) of his being professionally engaged on behalf of the Commissioners as a legal practitioner and receiving a fee for services rendered in his professional capacity :

Provided that no such Commissioner shall act as a Commissioner or member of a committee, or take part in any proceedings relating to any matter in which he has a share or interest as described in clause (a) of this sub-section.

¹These words were substituted for the words "one year" by sec. 7 of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

²See foot note 2 on page 297, ante.

(Part III.—Chapter—III.—The Municipal Authorities.—
Secs. 63—66.)

63. (1) A Commissioner who has been removed from his office under sub-section (1) or under clause (a) or clause (b) of sub-section (2) of section 62 shall not be eligible for election or re-election as a Commissioner, without the consent of the ¹[State Government].

(2) A Commissioner who has been removed from his office in any municipality under clauses (c), (d), (e) or (f) of sub-section (2) of section 62 shall not be elected or re-elected a Commissioner of that municipality within the period of three years from the date of his removal.

(3) A Chairman ²[or a Vice-Chairman] in respect of whom a final order has been made under section 62 removing him from the municipality as Commissioner, shall thereupon cease to be Chairman ³[or Vice-Chairman, as the case may be].

Travelling
expenses
of Chair-
man, Vice-
Chairman
and Com-
missioner.

64. The Commissioners at a meeting may, from time to time, in accordance with rules framed by the ¹[State Government] pay out of the Municipal Fund to the Chairman or Vice-Chairman, or a Commissioner such travelling expenses as may be incurred in performing journeys for carrying out the purposes of this Act.

Power of
State
Govern-
ment to
make
rules.

65. The ¹[State Government] may make rules—

- (a) prescribing the manner of holding the election of the Chairman and Vice-Chairman, and
- (b) regulating the payment of travelling expenses to the Chairman, Vice-Chairman or a Commissioner.

Establishment.

Appoint-
ment of
sub-
ordinate
officers.

66. (1) The Commissioners at a meeting may, subject to the provisions of this Act and the rules made thereunder from time to time, determine what officers and what servants of the commissioners are necessary for the municipality and may fix the salaries and allowances to be paid and granted to such officers and servants.

(2) Subject to the scale of establishment approved by the Commissioners under sub-section (1), the Chairman shall have power to appoint such persons as he may think fit, and from time to time to remove such persons and appoint others in their place :

Provided as follows :

- (i) a person shall not be appointed to an office carrying a monthly salary of more than fifty rupees or a salary rising by periodical increments to more than fifty

¹See foot-note 2 on page 297, *ante*.

²These words were inserted by sec. 8(a) of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

³These words were added by sec. 8(b), *ibid*.

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—
Sec. 67.)

rupees without the sanction of the Commissioners at a meeting, and an officer or servant whose post carries a monthly salary of more than twenty rupees shall not be dismissed without such sanction ;

(ii) no appointment carrying a monthly salary of more than two hundred rupees or a salary rising by periodical increments to more than two hundred rupees shall be created without the sanction of the ¹[State Government], and every nomination to, and dismissal from, any such appointment shall be subject to confirmation by the ¹[State Government] ;

(iii) no person holding an office carrying a monthly salary of one hundred rupees or more shall be dismissed unless such dismissal is sanctioned by a resolution of the Commissioners passed at a special meeting called for the purpose and, except with the consent of the ¹[State Government] unless such resolution has been supported by the votes of not less than two-thirds of the ²[total number of Commissioners holding office for the time being].

³(3) Notwithstanding anything contained in sub-section (2), the creation of and nomination to or suspension, removal or dismissal from, the post of Executive Officer shall, irrespective of the salary assigned to the post, be subject to confirmation by the State Government.

⁴67. (1) Notwithstanding anything contained in section 66, the State Government may, after consulting the Commissioners, if it thinks necessary so to do in the public interest, require the Commissioners of any municipality to appoint at a meeting, within such time as may be specified by the State Government, all or any of the following officers :—

- (a) an Executive Officer,
- (b) a Secretary,
- (c) an Engineer,
- (d) a Health Officer, and
- (e) one or more Sanitary Inspectors.

(2) An officer appointed under sub-section (1) shall be of such class or possess such qualifications as may be prescribed and shall be paid out of the Municipal Fund such salary and allowances, if any, as the Commissioners at a meeting, subject to the approval of the State Government, may fix.

(3) Except as is provided in sub-section (3) of section 73, no Executive Officer, Secretary, Engineer, Health Officer or Sanitary Inspector shall be removed from office by the Commissioners except on resolution carried at a special meeting called for the

Appointment of Executive Officer, Secretary, etc., on requisition by Government.

¹See foot note 2 on page 2, *ante*.

²These words were substituted for the words "whole number of Commissioners of the municipality" by sec. 16(1) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

³Sub-section (3) was added by sec. 16(3), *ibid*.

⁴Section 67 was substituted for the original section by sec. 17, *ibid*.

(Part III.—Chapter III.—The Municipal Authorities.—
Sec. 67A.)

purpose and supported by the votes of not less than two-thirds of the total number of Commissioners holding office for the time being.

(4) Where under sub-section (1) the State Government requires the Commissioners of any municipality to appoint any of the officers referred to in that sub-section, the State Government may, if the Commissioners make default in making the appointment within the specified time or such further time as may be allowed by the State Government, make the appointment and fix the terms and conditions of service, including the salary and allowances, of the officer as it thinks proper, and such salary and allowances shall be paid out of the Municipal Fund.

(5) Every nomination to and suspension, removal or dismissal from any appointment made under this section shall be subject to confirmation by the State Government.

¹67A. (1) Notwithstanding anything contained in section 66 or section 67, ²[if in the opinion of the State Government the affairs of a municipality—

(a) are not properly managed, or

(b) cannot, for failure of a general election or for any other reason, whatsoever, be managed in accordance with law,

and if in its opinion it is desirable in the public interest so to do, it may,] by notification, declare that the municipality shall have an Executive Officer for such period as may be specified in the notification :

Provided that the State Government may, if it thinks fit, by notification, extend such period from time to time.

(2) An Executive Officer referred to in sub-section (1) shall be appointed by the State Government and shall be paid out of the Municipal Fund such salary and allowances as may from time to time be fixed by the State Government.

(3) The Executive Officer of a municipality, appointed under this section, ³[shall exercise such powers of the Chairman or of the Commissioners] whether at a meeting or otherwise as may be conferred on him by notification by the State Government and on such notification such powers ⁴[shall cease to be exercisable by the Chairman or by the Commissioners, as the case may be.].

(4) The State Government may at any time suspend, remove, dismiss or otherwise punish an Executive Officer appointed under this section.

¹Section 67A was inserted by sec. 18 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²Substituted with retrospective effect for the words "the State Government, if in its opinion the affairs of a municipality are not properly managed and if it considers it desirable in the public interest to do so, may," by sec. 4 (1) of the Bengal Municipal (Second Amendment) Act, 1961 (West Ben. Act, XVIII of 1961).

³Substituted with retrospective effect for the words "shall exercise such powers of the Commissioners" by sec. 4(2) (a), *ibid.*

⁴Substituted with retrospective effect for the words "shall cease to be exercisable by the Commissioners" by sec. 4(2) (b), *ibid.*

Appoint-
ment, etc.,
of Execu-
tive
Officer by
the State
Govern-
ment.

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—
Secs. 68, 69.)

68. (1) The Executive Officer shall be the principal executive officer of the Commissioners and all other officers and servants of the Commissioners shall be subordinate to him. He shall have the same right of being present at a meeting of the Commissioners or of any standing or special committee, and of taking part in the discussions thereat as if he were a Commissioner or a member of such committee and with the consent of the Chairman or the president of the meeting, as the case may be, he may at any time make a statement or explanation of facts, but he shall not vote upon, or make, any proposition at such meeting.

Power of
the
Executive
Officer.

(2) Subject to the provisions of sub-section (2) of section 51¹ [and sub-section (3) of section 67A] the Executive Officer shall act in respect of all other matters under the direction of the Chairman through whom he shall be responsible to the Commissioners.

69. (1) The Commissioners, at a meeting specially convened for the purpose, by a resolution in favour of which not less than two-thirds of the Commissioners present and voting at such meeting shall have voted, may, subject to the approval of the² [State Government], make rules—

Power to
frame
rules for
pensions
and
gratuities
or for the
creation of
a provident
or annuity
fund.

- (a) for the granting of pensions, gratuities and bonuses out of the Municipal Fund ;
- (b) for the granting of compassionate allowances and gratuities to members of the families of deceased municipal officers and servants ; and
- (c) for the creation and management of a provident or annuity fund (which may be combined with a system of bonuses based on length of service), for compelling contributions to such provident or annuity fund on the part of their officers and servants, and for supplementing such contributions out of the Municipal Fund.

(2) The Commissioners at a meeting may, from time to time, in accordance with such rules—

- (i) grant pensions or bonuses or both or grant allowances or annuities out of such provident or annuity fund to any of their officers or servants, as they may see fit ;
- (ii) grant advances out of such provident fund to any of their officers or servants, as they may see fit ;
- (iii) grant a gratuity based on the length of service of the deceased to any member of the family of any of their officers or servants who die while in the service of the Commissioners ;
- (iv) by a resolution in favour of which not less than two-thirds of the Commissioners present at such meeting have voted,—

¹These words were inserted by sec. 19 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²See foot-note 2 on page 297, ante.

[Ben. Act XV]

(Part III.—Chapter III.—The Municipal Authorities.—
Secs. 70—72.)

(a) grant a special pension or gratuity or both to any member of the family of any of their officers or servants who has died from disease or injury contracted in the discharge of a duty which was attended with extraordinary bodily risk, and

(b) in addition to other benefits grant a bonus to any officer or servant in recognition of work or service of exceptional merit.

(3) For the purposes of this chapter the family of a municipal officer or servant shall be deemed to include his wife, his children, and his father, mother, brother or sister dependent upon him for support.

Contributions in the case of servants of the Government employed by the Commissioners.

70. (1) The Commissioners shall contribute to the pension, gratuities and allowances of any servant whose services are lent or transferred by ¹[any Government] to the Commissioners.

(2) Such contribution shall be to the extent prescribed by ²[the conditions of service under which the officer is serving the ³Government].

Notice to be given by *mehters* of intention to withdraw from service.

71. (1) A *mehter* or other servant of the Commissioners employed to remove or deal with sewage, offensive matter or rubbish shall not withdraw from his duties without the permission of the Commissioners, unless he has given notice in writing not less than one month previously of his intention so to withdraw.

(2) Any *mehter* or other such person who withdraws from his duties without giving such notice as aforesaid shall be liable to rigorous imprisonment for a period which may extend to one month or to fine not exceeding fifty rupees or both and shall forfeit all salary which may be due to him.

(3) The ⁴[State Government] may direct that on and from a specified future date the provisions of sub-sections (1) and (2) shall apply also to any other specified class of servants of the Commissioners whose functions intimately concern the public health or safety.

Prohibition of having share or interest in contract or employment with Commissioners.

72. (1) No person shall be eligible for employment as a municipal officer or servant if he has, directly or indirectly by himself or his partner or employer or employee, any share or

¹These words were substituted for the word "Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "the rules of the Government Civil Pension and Leave Codes", *ibid.*

³The word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴See foot-note 2 on page 297, *ante*.

of 1932.]

*(Part III.—Chapter III.—The Municipal Authorities.—
Secs. 73—75.)*

interest in any contract or employment with, by, or on behalf of the municipality.

(2) If any municipal officer or servant acquires, directly or indirectly as aforesaid, any such share or interest otherwise than as such officer or servant he shall cease to be a municipal officer or servant and his office shall become vacant from the date on which he is removed from office by the authority which appointed him; and he shall also be liable to be punished as provided in section 500.

(3) Nothing in sub-sections (1) and (2) shall apply to any such share or interest as under sub-section (5) of section 62 it is permissible for a Commissioner to have without being thereby disqualified to be a Commissioner.

73. (1) A person shall not be eligible for the office of Executive Officer, Secretary, Engineer, Health Officer, Superintendent of Waterworks, Sanitary Inspector, Tax-Collector, Accountant or Overseer of a municipality if he is seriously in debt.

Indebted-
ness.

(2) If any question arises as to whether any person is seriously in debt within the meaning of sub-section (1), it shall be decided—

(a) in the case of a candidate for any office mentioned in sub-section (1), appointment to which is subject to the approval of the ¹[State Government] —by the ¹[State Government], and

(b) in the case of a candidate for any other office mentioned in sub-section (1)—by the authority which makes appointment to such office.

(3) If any person holding any of the offices mentioned in sub-section (1) is found, by the authorities respectively referred to in sub-section (2), to be seriously in debt, he may be removed from his office by the authority which appointed him.

74. Every person applying for employment in a municipality shall, if he is related by a blood relationship to, or is closely connected by marriage with, the Chairman, Vice-Chairman or any Commissioner, or any of the officers mentioned in sub-section (1) of section 73, notify in writing the fact and the nature of such relationship or connection to the authority making the appointment before the appointment is made, and in default thereof the appointment, if made, shall be deemed to be invalid.

Relation-
ship of
candidates
for employ-
ment in
the muni-
cipality.

75. The Commissioners at a meeting may, subject to the sanction of the ¹[State Government], make rules as to—

(i) the duties, appointment, leave, fining, suspension and removal of municipal officers and servants;

(ii) the nature and amount of security to be furnished by different classes of municipal officers or servants for the proper discharge of their duties.

Power to
Commis-
sioners to
make
rules.

¹See foot-note 2 on page 297, ante.

[Ben. Act XV]

(Part III.—Chapter III.—The Municipal Authorities.—
Secs. 76—78.)Power to
State
Govern-
ment to
make rules.76. The ¹[State Government] may make rules—²(a) prescribing the qualifications of candidates for appointment as Executive Officers and the terms and conditions of service of such officers ;

(a) prescribing the qualifications of candidates for employment by the Commissioners as Engineers, Health Officers, Superintendents of Waterworks, Sanitary Inspectors, Assessors, Accountants, Overseers, female medical practitioners, nurses, health visitors, midwives and veterinary practitioners ;

(b) prescribing the proportion of the pay and allowances of ³[servants of the Government] employed by the Commissioners which shall be borne by the Commissioners, and providing for the control of such officers ; and

(c) prescribing the division of Health Officers and Sanitary Inspectors into classes or grades according to their qualifications :

⁴Provided that where the services of any servant of the ⁵[Government] are lent or transferred by any Government other than the ⁶[State] Government, the rules to be made under clause (b) of this section shall be made by that Government.*Conduct of Business.*Ordinary
meetings.

77. (1) The Commissioners shall meet for the transaction of business at their office, at least once in every month, and as often as a meeting shall be called by the Chairman, or, in his absence, by the Vice-Chairman.

(2) If there shall be no business to be laid before the Commissioners at any monthly meeting, the Chairman shall, instead of calling the meeting, give notice of the fact to each Commissioner three days before the date which is appointed for the monthly meeting.

Meeting on
requisition
by Com-
missioners.

78. (1) The Chairman, or, in his absence, the Vice-Chairman, shall call a special meeting of the Commissioners on a requisition signed by not less than one-third of the number of Commissioners of the municipality.

¹ See foot-note 2 on page 297, *ante*.² Clause (a) was inserted by sec. 20 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).³ The words "servants of the Crown" were originally substituted for the words "Government Officers" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.⁴ This proviso was inserted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.⁵ See foot-note 8 on page 388, *ante*.⁶ This word was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—Secs. 79—82.)

(2) If the Chairman or Vice-Chairman fails to give notice of a special meeting to be held within fifteen days after such requisition has been made, the meeting may be called on seven days' notice by any three of the Commissioners of the municipality.

79. The Chairman, or, in his absence, the Vice-Chairman, shall preside at every meeting, and, in the absence of both the Chairman and Vice-Chairman, the Commissioners shall choose some one of their number to preside.

Person to preside at meetings.

80. (1) All questions which may come before the Commissioners at a meeting shall be decided by a majority of votes, unless otherwise provided in this Act.

Decision of questions and casting vote.

(2) In case of equality of votes, the person presiding shall have a second or casting vote.

81. No Commissioner or member of a standing or other committee shall vote on any matter affecting his own pecuniary interest or on any question which regards exclusively the assessment of himself or the valuation of any property in respect of which he is in any way directly interested or of any property of or for which he is manager or agent or his liability to any tax, rate, toll or fee.

Commissioners disqualified from voting on certain questions.

82. (1) No business shall be transacted at any meeting of the Commissioners unless such meeting has been called by the Chairman or Vice-Chairman, or, under section 45 or section 78, by persons signing a requisition, or under section 45 by the Magistrate, ¹[or under section 61,] nor except for the election of a person to preside for the purposes of sub-section (3) unless a quorum shall be present.

Quorum and adjournment for want thereof.

(2) A quorum shall be, in any municipality in which the Commissioners are more than fifteen, five ;

in any other municipality, a number being not less than one-third of the ²[total number of Commissioners holding office for the time being] :

Provided that in cases where the ²[total number of Commissioners holding office for the time being] is not evenly divisible by three, the one-third shall be ascertained by taking the number ³[next above such total number] which is evenly divisible by three, as the number to be divided.

¹These words were inserted by sec. 21(1) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²These words were substituted for the words "whole number of Commissioners" by sec. 21(2)(a), *ibid.*

³These words were substituted for the words "next above the whole number" by sec. 21(2)(b), *ibid.*

(Part III.—Chapter III.—The Municipal Authorities.—
Secs. 83—85.)

(3) If, at the time appointed for a meeting, or within half an hour thereafter, a quorum is not present, the meeting shall stand adjourned to some future day to be appointed by the Chairman or in his absence the Vice-Chairman and three days' notice of such adjourned meeting shall be given. The members present at such adjourned meeting shall form a quorum, whatever their number may be.

Notice of
list of
business
and of
meetings.

83. A list of the business to be transacted at a meeting and, in the case of a meeting called on a requisition, the terms of the requisition shall be sent to every Commissioner at least three days before the date appointed for the meeting, and no business of which such notice has not been given shall be brought forward at a meeting.

Minutes of
proceed-
ings.

84. (1) Minutes of the proceedings of all meetings of the Commissioners ¹[in which shall be recorded *inter alia* the names of all Commissioners present] shall be entered in a book to be kept for the purpose, and shall be signed by the person presiding over the meeting, and such book shall be open to the inspection of the tax-payers.

²(1a) Whenever at any meeting of the Commissioners a motion or resolution is passed authorising any expenditure or authorising any action leading to or involving expenditure, the names of the Commissioners who vote for such motion or resolution shall be recorded in the minutes.

(2) A copy of the minutes of the proceedings of all meetings of the Commissioners shall within seven days be forwarded by the Chairman to the District Magistrate.

(3) The minutes shall be laid before the next meeting of the Commissioners for confirmation and shall be also signed at such meeting by the person presiding thereat.

Inspection
of books
by Com-
missioners.

85. A Commissioner shall have the right to inspect all books ³[and records] of the municipality at such times as the Commissioners at a meeting may fix for this purpose :

Provided that the Chairman may, for reasons to be recorded by him in writing, direct that any particular book ⁴[or record] shall not be inspected without the direction of the Commissioners at a meeting.

¹These words were inserted by sec. 22(1) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²Sub section (1a) was inserted by sec. 22 (2), *ibid.*

³These words were inserted by sec. 23(1), *ibid.*

⁴These words were inserted by sec. 23(2), *ibid.*

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—
secs. 86—88.)

Standing Committees.

86. (1) The Commissioners at a meeting may, from time to time, appoint standing committees and by specific resolution delegate to, or withdraw from such committees any of their functions, powers and duties and may also from time to time, by like resolution, refer to them for inquiry and report, or for opinion such subjects relating to the powers or duties of the Commissioners, as the Commissioners at a meeting may think fit.

Formation
of standing
Com-
mittees.

(2) Each standing committee shall consist of Commissioners who shall not be less than two-thirds of the whole number of the members of the committee and of such others persons not exceeding one-third in number as the Commissioners at a meeting may, from time to time, by a specific resolution, determine and elect for this purpose.

(3) Each such committee shall perform the duties assigned to it by this Act or the rules made thereunder, and may exercise the powers delegated to it, and shall be liable to all the obligations imposed by this Act on Commissioners in respect of such powers.

(4) All the proceedings of any such committee shall be subject to confirmation or modification by the Commissioners at a meeting, unless in special cases the Commissioners at a meeting otherwise direct.

(5) All questions regarding the removal or resignation of members of a committee shall be settled by the Commissioners at a meeting.

Joint Committees.

87. (1) Subject to the prescribed restrictions the Commissioners of any municipality may join with any other local authority in constituting out of their respective bodies a joint committee, for any purpose in which they are jointly interested, and in delegating to any such joint committee any power which might be exercised by the Commissioners or any of the local authorities concerned.

Formation
of joint
commit-
tees.

(2) Such joint committee may, from time to time, make rules as to its proceedings, and as to the conduct of correspondence relating to the purpose for which it is constituted.

88. (1) If a dispute arises between the Commissioners of a municipality and any other local authority on any matter in which they are jointly interested, such dispute shall be referred to the ¹[State Government] whose decision shall be final and shall not be questioned in any court :

Decision of
disputes
between
local
authorities.

²Provided that if the dispute is between the Commissioners and a Cantonment Authority or the Port Authority of a major port, the decision of the ³[State] Government shall be subject to the concurrence of the Central Government.

¹See foot-note 2 on page 297, *ante*.

²This proviso was inserted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1987.

³See foot-note 6 on page 340, *ante*.

(Part III.—Chapter III.—The Municipal Authorities.—
Secs. 89, 90.)

(2) If such dispute arises between the Commissioners of two municipalities who have for any purpose constituted or who may, for the specific purpose of settling the dispute, constitute a joint committee under the provisions of section 87 such joint committee shall, in the first instance, inquire into the said dispute and after taking such evidence, and calling for such papers as it may think fit, shall deliver a written award on the matters in dispute, which shall be binding on the Commissioners of both municipalities, provided that the Commissioners of either of the said municipalities may appeal against such decision to the ¹[State Government], whose orders shall be final and shall not be questioned in any court :

Provided that no dispute shall be decided under this section until the Commissioners of the municipalities or the local authorities concerned have been heard or have had a reasonable opportunity of being heard.

(3) The ¹[State Government] may regulate by rules the relations to be observed between Commissioners of municipalities and other local authorities in any matter in which they are jointly interested :

²Provided that any rules regulating the relations to be observed between the Commissioners of Municipalities and Cantonment Authorities or the Port Authorities of major ports, shall have no effect until they are approved by the Central Government.

Special Committees.

Formation
of special
commit-
tees.

89. (1) The Commissioners at a meeting may, from time to time, by specific resolution, appoint a special committee to inquire into and report upon any matter (to be specified in such resolution) which may arise in connection with any of the powers, functions or duties of the Commissioners and which is not at the time under consideration by a standing committee constituted under section 86.

(2) The provisions of sub-sections (3), (4) and (5) of section 86 shall be deemed to apply to every such special committee, which shall confine its enquiry to the matter specified in the resolution whereby it was constituted.

Appoint-
ment of
persons
other than
Commis-
sioners as
members
of com-
mittees.

90. Notwithstanding anything contained in this Act, the Commissioners at a meeting may associate with any committee appointed under section 89 for such period as they may think fit any person of either sex who is not a Commissioner, but who may, in the opinion of the Commissioners, possess special qualifications for serving on such committee and such persons shall have a right to vote at meetings of the special committee, and shall be deemed to be members thereof for all purposes for such period :

¹See foot-note 2 on page 397, ante.

²This proviso was inserted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1932.]

(Part III.—Chapter III.—The Municipal Authorities.—
Secs. 91—93.)

Provided that the number of persons so appointed on any committee shall not exceed one-third of the whole number of the members of such committee.

Rules of Business.

91. The Commissioners at a meeting may, subject to the sanction of the ¹[State Government], make rules as to—

Power to make rules as to business of Commissioners and committees.

- (a) the time of their meetings, the business to be transacted at meetings and the period of notice of meetings and the manner in which such notice shall be given ;
- (b) the conduct and control of proceedings at meetings, the due record of all dissents and discussions, and the adjournment of meetings ;
- (c) the custody of the common seal ;
- (d) the division of duties among the Commissioners and the powers to be exercised by members to whom particular duties are assigned ;
- (e) the manner of appointment and the constitution of committees and the regulation and conduct of their business ; and
- (f) the delegation of powers or duties to committees or to the Chairman of a committee.

92. (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of—

Validation of acts and proceedings.

- (a) the existence of any vacancy in or any defect in the constitution of, the municipality or any standing, joint or special committee or any disqualification in less than half of the Commissioners or members of the committee present when the act or proceeding was done or taken ;
- (b) any Commissioner having voted or taken part in any proceeding in contravention of the proviso to section 62 ; or
- (c) any defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Commissioners, or of any standing joint or special committee, the minutes of the proceedings of which have been duly signed by the person presiding over the meeting shall be deemed to have been duly convened and when the minutes are confirmed at a subsequent meeting shall be deemed to be free from all defects and irregularity and the accidental omission to serve notice of a meeting on any Commissioner shall not affect the validity of the meeting.

Administration Report.

93. (1) As soon as may be after the first day of April in every year and not later than such date as may be fixed by the ¹[State Government], the Commissioners shall submit to the ¹[State Government] a report on the administration of the municipality during the preceding year in such form and with such details as the ¹[State Government] may direct. A copy of the report shall be submitted by the Commissioners to the District Magistrate.

Annual administration report.

¹See foot-note 1 on page 297, ante.

[Ben. Act XV

(Part III.—Chapter IIIA.—Notified areas.—Secs. 93A, 93B.)

(2) The report shall be published in such manner as the Commissioners at a meeting may direct.

CHAPTER IIIA.

Notified Areas.

Constitu-
tion of
notified
areas.

¹93A. (1) Whenever, in the opinion of the State Government, it is necessary to make provisions for all or any of the purposes of this Act in respect of—

- (i) any area which does not fulfil the conditions for being constituted a municipality under this Act,
- (ii) any area which is comprised in a newly-developing town, or
- (iii) any area in which new industries have been or are being established,

the State Government may, by notification, specifying such area, declare its intention to do so.

(2) Any inhabitant of the area in respect of which a notification has been published under sub-section (1) may, if he objects to the action intended to be taken, submit his objection in writing to the State Government within three months from the date of the publication of the notification.

(3) The State Government may, after considering the objections, if any, received by it during the period referred to in sub-section (2), make an order—

- (a) withdrawing the notification under sub-section (1), or
- (b) constituting the area specified in the notification or any part thereof, as a notified area for purposes of this Chapter.

Power to
apply
enactments
to, and con-
stitute
Authority
in notified
areas.

¹93B. (1) The State Government may, by order to be published in the *Official Gazette*,—

- (i) extend² to a notified area with such incidental or consequential modifications as the State Government may consider necessary for giving effect to the provisions of this Chapter—
- (a) any provision of this Act which applies to a municipality, or
- (b) any rule or by-law in force in any municipality; and

¹Chapter IIIA (containing secs. 93A to 93J) was inserted by sec. 2 of the Bengal Municipal (Second Amendment) Act, 1960 (West Ben. Act XXV of 1960).

²The following provisions of the Act were extended to the notified area of Durgapur, namely:—Sections 8, 53, 68, 71, 94 to 103, 105 to 115, 117, 122A to 122F, 128 to 214, 216, 221, 230 to 245, 247 to 277, 278 to 310, 334 to 347, 348 to 355, 356 to 369, 376 to 393, 394, 395, 402 to 414, 414A, 414B, 435 to 447, 449 to 455, 506 to 529, 531 to 536 and 537 to 542A. *Vide* notification No. 7165/M. 1A-19/62, dated 29.9.62, published in the *Calcutta Gazette, Extraordinary* of 1962, Part I, page 2965.

of 1932.]

(Part III.—Chapter IIIA.—Notified areas.—
Secs. 93C—93G.)

- (ii) appoint for a notified area a Committee consisting of not less than five and not more than nine members, to be known as the notified area Authority, to carry out all or any of the purposes of this Chapter.

(2) The State Government shall appoint a Chairman and may also appoint a Vice-Chairman from amongst the members of the Committee referred to in clause (ii) of sub-section (1).

¹93C. (1) When any tax is imposed in a notified area under any of the provisions of this Act as extended under sub-section (1) of section 93B, the proceeds of such tax shall be expended in the same manner in which and for the same purposes for which the municipal fund may be expended by a municipality.

Consequences of the application of the Act to a notified area.

(2) When any provision of this Act or any rule or by-law is extended with or without modification to a notified area, such provision or rule or by-law shall, unless a different intention appears, operate as if the notified area were a municipality and as if the powers and duties of the Commissioners of a municipality were vested in the notified area Authority.

¹93D. The State Government may, at any time, and in accordance with the provisions of this Act, by notification,—

Abolition or alteration of a notified area.

- (i) constitute the notified area or any part thereof to be a municipality, or
(ii) include the notified area or any part thereof within a municipality.

¹93E. (1) When the whole of a notified area is constituted to be a municipality, the notified area shall cease to exist and the properties, funds and other assets vested in the notified area Authority and all the rights and liabilities of such Authority shall vest in and devolve on the municipality.

Consequences of such abolition or alteration.

(2) When a part of a notified area is constituted to be, or is included in, a municipality, such part shall be deemed to have been excluded from the area specified in the notification issued under clause (b) of sub-section (3) of section 93A and so much of the properties, funds and other assets vested in the notified area Authority and such of the rights and liabilities of such Authority as may be allocated by the State Government by order in this behalf shall vest in and devolve on the municipality.

Notified area Authority to be deemed Town Committee.

West Ben.
Act I of
1957.

¹93F. The notified area Authority shall, for purposes of section 6 of the West Bengal Panchayat Act, 1956, be deemed to be a Town Committee.

Officers and servants.

¹93G. The notified area Authority may, subject to the approval of the State Government, appoint such officers and servants as may be necessary for the purpose of giving effect to the provisions of this Chapter.

¹See foot-note 1 on page 346, ante.

(Part III.—Chapter IIIA.—Notified areas.—Chapter IV.—Municipal Property and Finance.—Secs. 93H—95).

Removal
of difficul-
ties.

¹93H. If any difficulty arises in giving effect to the provisions of this Chapter or the rules made thereunder, the State Government may take such steps or issue such orders not inconsistent with the said provisions as may be necessary for the removal of the difficulty.

Vesting of
additional
powers.

¹93I. The State Government may by order vest the notified area Authority with such powers and duties exercisable by any other authority within the whole or any part of the notified area under any local or special law as the State Government thinks fit.

Power to
make rules.

¹93J. (1) The State Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the qualifications for appointment of the members of the notified area Authority and the manner of filling casual vacancies among such members ;
- (b) the term of office of the members, the Chairman and the Vice-Chairman of the notified area Authority ;
- (c) the number of members necessary to constitute a quorum at a meeting of the notified area Authority ; and
- (d) any other matter relating to the constitution and functions of the notified area Authority.

CHAPTER IV.

Municipal Property and Finance.

I.—PROPERTY, CONTRACTS AND LIABILITIES.

Municipal property.

Commis-
sioners
may
acquire
and hold
property
within or
without
municipi-
pality.

94. The Commissioners of a municipality may acquire by gift, purchase or otherwise and hold property whether movable or immovable within or without the limits of the municipality.

Municipal
property.

95. (1) All property within the municipality of the nature hereinafter in this section specified, other than property maintained ²[by the Central or the State Government] or another local authority, shall vest in and belong to the Commissioners, and shall, with all other property of whatsoever nature or kind

¹ See foot-note 1 on page 246, *ante*.

² The words "by the Central or the Provincial Government" were originally substituted for the words "by Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(2) of the Adaptation of Laws Order, 1960.

of 1932.]

*(Part III.—Chapter IV.—Municipal Property and Finance.—
Sec. 95.)*

which may become vested in the Commissioners, be under their direction, management and control, that is to say—

- (a) all public streets, including the soil, the pavements, stones and other materials thereof and all drains, bridges, culverts, trees, erections, materials, implements and other things provided for such streets ;
- (b) all public channels, water courses, springs, tanks, *ghats*, reservoirs, cisterns, wells, aqueducts, conduits, tunnels, pipes, pumps, and other waterworks, whether made, laid or erected at the cost of the Commissioners or otherwise, and all bridges, buildings, engines, works, materials and things, connected therewith, or appertaining thereto, and also any adjacent land (not being private property) appertaining to any public tank :

Provided that water-pipes and any waterworks connected therewith or appertaining thereto which with the consent of the Commissioners are laid or set up in any street by the owners of any mill, factory, dockyard, workshop or the like primarily for the use of their employees shall not be deemed to be public waterworks by reason of their use by the public ;

- (c) all public sewers and drains, and all works, materials and things appertaining thereto and other conservancy works :

Provided that for the purpose of enlarging, deepening or otherwise repairing or maintaining any such sewer or drain the subsoil appertaining thereto shall also be deemed to vest in the Commissioners :

Provided also that where any installation or work for the treatment or disposal of sewage is constructed by the owners of any mill, factory, dockyard, workshop or the like primarily for the use of their employees, the laying of sewers and other things appertaining thereto in a street, with the consent of the Commissioners, shall not by virtue of this clause or by reason of their use by the public cause such installation or sewers or works appertaining thereto to vest in the Commissioners ;

- (d) all sewage, rubbish and offensive matter deposited on streets or collected by the Commissioners from streets, latrines, urinals, sewers, cesspools and other places ;
- (e) all public lamps, lamp-posts and apparatus connected therewith or appertaining thereto ; and
- (f) all buildings erected by the Commissioners and all lands, buildings or other property transferred to the Commissioners ¹[by the Central or the State Government] or acquired by gift, purchase or otherwise for local public purposes.

(2) The ²[State Government] may, by notification, exclude any street, bridge, sewer or drain from the operation of this Act or of any specified section of this Act :

¹See foot-note 2 on page 348, *ante*.

²See foot-note 2 on page 297, *ante*.

[Ben. Act XV

(Part III.—Chapter IV.—Municipal Property and Finance.—
Secs. 96, 97.)

Provided that, if the cost of the construction of the work shall have been paid from the Municipal Fund, such works shall not be excluded from the operation of this Act or of any specified section of this Act ¹[except after consideration of the views] of the Commissioners at a meeting.

(3) All property movable or immovable, and all interest of any kind whatsoever, derived under any of the enactments specified in Schedule I, or otherwise and, vested in, or held in trust for, the late Commissioners under the Bengal Municipal Act, 1884, shall become vested in the Commissioners, and all rights of whatsoever description used, enjoyed or possessed by the late Commissioners under any such enactment shall become vested in the Commissioners for the purposes of this Act.

Ben. Act
III of
1884Transfer
of private
streets,
etc., to
Commis-

96. The Commissioners at a meeting may agree with the person in whom the property in any street, bridge, tank, *ghat*, well, channel or drain is vested to take over the property therein or the control thereof, and after such agreement may declare by notice in writing put up thereon or near thereto, that such street, bridge, tank, *ghat*, well, channel or drain has been transferred to the Commissioners.

Thereupon the property therein or the control thereof, as the case may be, shall vest in the Commissioners and such street, bridge, tank, *ghat*, well, channel or drain shall thenceforth be repaired and maintained out of the Municipal Fund.

Transfer
of certain
public
institutions
to the
Commis-
sioners.

97. (1) Any hospital, dispensary, school, library, museum, rest-house, *ghat* or market within a municipality, not being private property or the property of a religious institution or society, and all furniture and other articles appertaining thereto, not being such property, may, by order of the ²[State Government] duly published on the spot, be vested in the Commissioners of the municipality; and thereupon all endowments or funds belonging thereto shall be transferred to, and vested in, such Commissioners as trustees for the purposes to which such endowments and funds were lawfully applicable at the time of such transfer:

Provided that no such order shall be published until one month after notice of the intention to transfer such property shall have been published in the ³[Official Gazette] and in ⁴Bengali within the municipality.

¹These words were substituted for the words "without the consent" by the Bengal Municipal (West Bengal Amendment) Act 1951 (XXI).

For footnote 4, substitute the following footnote, namely :—

⁴In the application of the Act to the district of Darjeeling (except Siliguri sub-division), after the word "Bengali", the words "and such other languages as the State Government may, by notification, specify" shall be substituted, vide L.S.G. Department notification No. 607/M.1A-15/55, dated the 19th January, 1957, published in the *Calcutta Gazette* of the 14th February, 1957, Part I, page 553.

of 1932.]

(Part III.—Chapter IV.—Municipal Property and Finance.—
Sec. 98.)

(2) If the Commissioners at a meeting, after publication of the said notice, object to the transfer to themselves of any hospital, dispensary, school, library, museum, rest-house, *ghat* or market on the ground that their funds cannot bear the charge, then such transfer shall not be made save under such conditions, as the Commissioners at a meeting may agree to accept.

(3) Sub-section (1) shall not apply to any hospital, dispensary, school, library, museum, rest-house, *ghat* or market which is vested in the Official Trustee of ¹[West Bengal], or to any hospital, dispensary, school, library, museum, rest-house *ghat* or market, which is under the control of a properly constituted committee of management without the previous consent in writing of such committee of management.

Power to acquire property.

98. (1) When any land, whether within or without the limits of a municipality, is required—

Acquisition
of land.

(a) for the purposes of the Act, or

(b) for the recoupment of the cost or any portion of the cost of carrying out any such purpose,

the ²[State Government] may, at the request of the Commissioners at a meeting, proceed to acquire it under the provisions of the Land Acquisition Act, 1894.

I of 1894.

(2) Before requesting the ³[State Government] to acquire land for the purposes referred to in clause (b) of sub-section (1) the Commissioners shall obtain previous sanction of the ³[State Government] and give due notice of their intention and an opportunity to any objector, who appears within such period as they may fix, to be heard in this connection.

❖(3) On payment by the Commissioners of the compensation awarded under the Land Acquisition Act, 1894, and of any other charges incurred in acquiring the land including costs, if any, incurred by the ³[State Government] in proceedings subsequent to acquisition concerning enhancement of the award for the land, the land shall vest in the Commissioners.

(4) The Commissioners shall be bound to pay to the ³[State Government] the cost, including all charges and costs referred to in sub-section (3), of any land acquired for the Commissioners on their application under the provisions of sub-section (1).

¹See foot-note 3 on page 296, *ante*.

²See foot-note 2 on page 297, *ante*.

³The words "Provincial Government" were originally substituted for the word "Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act XV

(Part III.—Chapter IV.—Municipal Property and Finance.—
Sec. 99.)*Abandonment of acquisition.*

Abandon-
ment of
acquisition
in consi-
deration of
special
payment.

99. (1) In any case in which the Commissioners propose to acquire any land for the recoupment of the cost of carrying out any of the purposes of this Act, the owner of the land or any person having an interest therein greater than a lease for years having seven years to run may make an application to the Commissioners requesting that the acquisition of the land be abandoned in consideration of the payment by such person of a fee to be fixed by the Commissioners in that behalf.

(2) The Commissioners shall admit every such application if it reaches them before the time fixed by the Collector under section 9 of the Land Acquisition Act 1894, for making claims in reference to the land : I of 1894.

Provided that unless the application is made by all persons who have an interest in the land greater than a lease for years having seven years to run, the application shall not be deemed to be admitted unless the person applying undertakes to pay in one instalment the full fee payable under sub-section (3) and thereafter pays such fee.

Explanation.—A mortgagee shall not be deemed to be a person having an interest in the land greater than a lease for years having seven years to run.

(3) If the Commissioners decide to admit any such application they shall forthwith inform the Collector, and the Collector shall thereupon stay proceedings for the acquisition of the land for such period as the Commissioners may request and the Commissioners shall proceed to fix a fee in consideration of which the acquisition of the land may be abandoned.

(4) In fixing the fee to be paid in consideration of the abandonment of the acquisition of the land, the Commissioners shall, so far as to them appear to be practicable, fix a sum which in their opinion represents two-thirds of the increment in the value of the land which will in their opinion accrue to that land as a result of the improvements effected in the locality by the scheme for the purposes of which the acquisition has been sanctioned.

(5) Such fee shall be and remain a charge on the land, in respect of which it has been fixed, until the repayment thereof with interest in the manner hereinafter provided and shall be payable by the applicant on or before a date to be fixed by the Commissioners in this behalf; and such date shall not be less than four years from the publication of the notification under section 6 of the Land Acquisition Act, 1894, nor shall such date be a date before that on which the scheme is declared by the Commissioners to be completed in so far as it affects such land.

of 1932.]

(Part III.—Chapter IV.—Municipal Property and Finance.—
Sec. 100.)

(6) Before the date so fixed, the person from whom the Commissioners have arranged to accept the said fee, may, if the Commissioners are satisfied that the security offered by him is sufficient, execute an agreement with the Commissioners either—

- (i) to leave the said fee outstanding as a charge on his interest in the land subject to the payment in perpetuity of interest at a rate not exceeding seven *per cent. per annum*, the said interest to run from the date fixed under sub-section (5), or
- (ii) to pay the said fee by such number of equal yearly or half-yearly instalments of principal or of principal and interest, as may be approved by the Commissioners, interest in both cases being calculated at a rate not exceeding seven *per cent. per annum* on the amount outstanding.

(7) When the said fee has been paid on or before the date fixed under sub-section (5), or when an agreement has been executed in pursuance of sub-section (6) in respect of any land, the proceedings for the acquisition of land shall be deemed to be abandoned.

(8) If the said fee be not paid on or before the date fixed under sub-section (5), the Collector shall then proceed to acquire the land.

(9) If any sum payable under an agreement executed in pursuance of sub-section (6) be not paid on the date on which it is due, or on such later date as the Commissioners may in their discretion fix in this behalf, so much of the fee fixed by the Commissioners under sub-section (3) as is still unpaid, shall be payable on that date in addition to the said sum.

(10) At any time after an agreement has been executed in pursuance of clause (i) of sub-section (6) any person may pay off the balance outstanding of the charge created thereby with interest due, if any, at a rate not exceeding seven *per cent. per annum*, up to the date of such payment.

100. When an agreement has been executed by any person in pursuance of sub-section (6) of section 99 in respect of any land, and any money payable in pursuance of that section is not duly paid, the same shall be recoverable by the Commissioners (together with interest up to the date of realization, at a rate not exceeding seven *per cent. per annum*), under the provisions of this Act ;

Recovery
of money
payable in
pursuance
of section
99.

and, if not so recovered, the Commissioners may, after giving public notice of their intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

[Ben. Act XV

(Part III.—Chapter IV.—Municipal Property and Finance.—
Secs. 101—103.)

Agree-
ment or
payment
under
section 99
not to bar
acquisi-
tion under
a fresh
decla-
ration.

101. If any land in respect of which an agreement has been executed, or a payment has been accepted in pursuance of sub-section (6) of section 99 be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894.

I of 1894.

Page 354—

For section 102, substitute the following section, namely:—

Power
purch
lease
sell l

“Power to purchase, 102. The Commissioners at a meeting
lease and sell lands. may—

(a) purchase, take on lease or otherwise acquire any
land for the purposes of this Act.

(b) sell, lease, exchange or otherwise transfer—

(i) any land which they have acquired for the pur-
poses of recoupment, or

(ii) with the previous sanction of the State Govern-
ment, any land which is not required for the
purposes of this Act:

Provided that no such sanction shall be necessary for
granting a lease for a period not exceeding three
years.”

(Substituted by West Ben. Act XVI of 1966, section 4.)

[No. 4, dated the 1st May, 1970.]

Power
transf
public
streets
the St
Govern
ment.

Contracts and liabilities.

Execution
of
contracts.

103. (1) The Commissioners may enter into and perform any contract necessary for the purposes of this Act.

(2) Every contract made on behalf of the Commissioners in respect of any sum exceeding ^a[five hundred rupees], or which shall involve a value exceeding ^a[five hundred rupees], shall be sanctioned by the Commissioners at a meeting and shall be in writing, and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, and shall be sealed with the common seal of the Commissioners :

^aProvided that in the case of a municipality the income of which during the preceding year was two and a half lakhs of rupees

^aThis heading and section 102A were inserted by sec. 24 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

^aThese words were substituted for the words “two hundred rupees” by sec. 25(1), *ibid*.

^aThis proviso was added by sec. 15 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

of 1932.]

(Part III.—Chapter IV.—Municipal Property and Finance.—
Secs. 104, 105.)

or more, the provisions of this sub-section shall apply as if the words "¹[one thousand rupees]" were substituted for the words "[five hundred rupees]."

* * * * *

(3) Unless so executed, such contract shall not be binding on the Commissioners.

XVI of
1908.

(4) Where the Indian Registration Act, 1908, or any rule made thereunder, requires or permits any act to be done with reference to a document by a person executing or claiming under the same, and the document has been executed on behalf of the Commissioners or is a document under which they claim, the act may, notwithstanding anything to the contrary contained in the aforesaid enactment or in any rule thereunder, be done by the Chairman, Vice-Chairman, Executive Officer, or Secretary of the municipality or by any other officer of the municipality empowered in this behalf by the Commissioners at a meeting.

104. [Personal liabilities of Commissioners.]—Omitted by sec. 26 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955.)

II.—FINANCIAL PROVISIONS.

The Municipal Fund.

105. There shall be constituted for each municipality a fund to be called the Municipal Fund and there shall be placed to the credit thereof—

Municipal
Fund.

(a) all sums received by or on behalf of the Commissioners under this Act or otherwise ;

(c) the balance, if any, standing at the credit of the Municipal Fund of the Municipality at the commencement of this Act.

¹These words were substituted for the words "five hundred rupees" by sec. 25(2) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

* * * * * on page 354. ante.

Page 355—

*Delete footnote 3.

the Commissioners, may, in its discretion, increase the sum of five hundred rupees as prescribed in this sub-section to a sum not exceeding five hundred rupees."

Vide Revenue Department notification No. 8435E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.

⁴Clause (b) was omitted by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act XV

(Part III.—Chapter IV.—Municipal Property and Finance.—
Secs. 106—108.)

Custody of
Municipal
Fund.

106. Unless the ¹[State Government] otherwise directs, all sums received on account of the Municipal Fund shall be paid into a Government treasury, or into any bank used as a Government treasury in or near to the municipality, and shall be credited to an account to be called the account of the municipality, to which they belong :

Provided that the Commissioners may invest any moneys not required for immediate use either in Government securities, or in any other form of security which may be approved of by the ¹[State Government] or in fixed deposit in the Imperial Bank of India.

Priority of
payments
on
account of
loans,
trusts,
establish-
ment and
audit.

107. Except as is otherwise provided in this Act, the Commissioners shall set apart and apply annually out of the Municipal Fund—

- (a) firstly, such sum as may be required for the repayment of, and the payment of interest on, any loan incurred under the provisions of the Local Authorities Loans Act, 1914 ;
- (b) secondly, such sum as is required for the discharge of the liabilities and obligations arising from any trust legally imposed upon or accepted by the Commissioners ;
- (c) thirdly, such sums as they are by this Act required to provide for payment of the salaries and allowances of their own establishment, including such contributions as are referred to in section 70 ;
- (d) fourthly, such sum as the ¹[State Government] may direct towards the cost of audit, towards the cost of establishment in any office of account or in any treasury and towards the salary and cost of establishment of any assessor or other special officer who may be appointed under this Act.

IX of
1914.

Purposes
to which
Municipal
Fund is
applicable.

108. (1) Subject to the charges specified in section 107, and subject to the payment of other sums, charges and costs necessary for carrying this Act into effect or duly directed or sanctioned for payment from the Municipal Fund by or under any of the provisions of this Act other than the provisions of this section or under any other enactment for the time being in force, the Commissioners at a meeting may apply the Municipal Fund to any of the following purposes within the municipality, that is to say—

- (i) the construction, diversion, maintenance and improvement of streets, tramways, bridges, squares, gardens, tanks, *ghats*, wells, channels, drains, latrines and urinals ;

¹See foot-note 2 on page 297, *ante*.

of 1932.]

*(Part III.—Chapter IV.—Municipal Property and Finance.—
Sec. 108.)*

- (ii) the watering and cleansing of streets ;
- (iii) lighting ;
- (iv) water-supply ;
- (v) conservancy and drainage including out-fall works and sewage disposal ¹[and preparation of compost manure from sewage] ;
- (vi) the acquiring, keeping and equipping of open spaces for purposes of ventilation, or for the promotion of physical exercise and public recreation ;
- (vii) the planting and preservation of trees in streets and public places ;
- (viii) the construction, maintenance and improvement of offices and other buildings under the control of the Commissioners or required for municipal purposes ;
- (ix) the construction and maintenance of model dwelling houses for the working classes and for the poorer classes ;
- (x) the construction, establishment, maintenance and improvement of schools either wholly or by means of grants-in-aid ;
- (xi) the training of teachers and the establishment of scholarships ;
- (xii) the construction, establishment, maintenance and improvement of hospitals, dispensaries, leper asylums, orphanages, rescue houses, maternity houses, child welfare centres, *sarais*, poor-houses and *dharamsalas*, either wholly or by means of grants-in-aid ;
- (xiii) the employment of vaccinators and the promotion of vaccination ;
- (xiv) the training and employment of Health Officers, Sanitary Inspectors, ²* medical practitioners, nurses, health visitors and midwives ;
- (xv) the prevention of the spread of dangerous diseases ;
- (xvi) regulating and abating offensive or dangerous trades and removing noxious vegetation ;

¹These words were added by sec. 27(1) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²The word "female" was omitted by sec. 16 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

[Ben. Act XV**(Part III.—Chapter IV.—Municipal Property and Finance.—
Sec. 108.)**

- (xvii) the payment of the expenses of indigent inhabitants of the municipality for journeys to and from any hospital established in any part of ¹[the whole of India except Part B States] for the treatment of special diseases, and of their subsistence and proper clothing thereat, according to such scale as may be fixed by the Commissioners at a meeting ;
- (xviii) the construction, establishment, maintenance and improvement of veterinary dispensaries, and the training and employment of veterinary practitioners ;
- (xix) the improvement of the breed of cattle ;
- (xx) the payment of rewards for the destruction of noxious animals or diseased or unclaimed dogs ;
- (xxi) all acts and things which are necessary for carrying out the purposes of the Prevention of Cruelty to Animals Act, 1890, and the Bengal Cruelty to Animals Act, 1920 ;
- (xxii) the construction, establishment, maintenance and improvement of municipal markets or slaughter-houses or the taking of markets or slaughter-houses on lease ;
- (xxiii) the construction, establishment, maintenance and improvement of municipal dairy farms, grazing grounds and milk depots and acts and things that may be necessary for the increase and improvement of the milk-supply ;
- (xxiv) the establishment and maintenance of public places for the disposal of the dead ;
- (xxv) the provision and maintenance of and assistance to public libraries and museums ;
- (xxvi) the establishment and maintenance of fire brigade ;
- (xxvii) the holding of fairs and industrial, sanitary and health exhibitions ;
- (xxviii) the taking of a census for the purposes of the municipality ;
- (xxix) the survey of buildings and lands and the preparation and maintenance from time to time of survey maps and plans and of other records relating to survey ;
- (xxx) the giving of relief, and the establishment of relief works, in time of famine, scarcity, or any natural calamity ;
- (xxxi) the disposal of unclaimed corpses and the burial or cremation of paupers, and the payment of contributions to charitable institutions for assisting in such disposal, burial or cremation ;

XI of 1890.
Ben. Act I
of 1920.

¹The words "all the Provinces of India" were originally substituted for the words "British India" by paragraph 4(2) of the India (Adaptation of Existing Indian Laws) Order, 1947, and thereafter these words within square brackets were substituted for the words "all the Provinces of India" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1932.]

(Part III.—Chapter IV.—Municipal Property and Finance.—
Sec. 109.)

(xxxii) the payment of compensation to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act ;

(xxxiii) the payment to an officer or servant of the Commissioners of a bonus for good work done, or of compensation, for loss incurred in the execution of his duty ;

(xxxiv) the carrying on of propaganda for public health and educational purposes ;

¹(xxxiva) the purchase and hoisting of the national flag ;

(¹xxxivb) the payment of, or the payment of a contribution to, the cost incurred on the occasion of any public ceremony held within the limits of the municipality ;

(xxxv) the re-excavation and repair of private tanks, wells and other sources of water-supply on such terms and conditions as to the Commissioners at a meeting may seem proper ; and

(xxxvi) all acts and things which are necessary for carrying out the purposes of this Act, or which are likely to promote the safety, health, welfare or convenience of the inhabitants of the municipality, expenditure whereon may be declared by the Commissioners, with the sanction of the ²[State Government], to be an appropriate charge on the Municipal Fund.

(2) The Commissioners may do all things, not being inconsistent with this Act, which may be necessary to carry out the purposes of this section.

(3) Nothing in this section shall affect any obligation of the Commissioners arising from a trust legally imposed upon or accepted by them.

109. Notwithstanding anything contained in section 108, the Commissioners at a meeting may, with the sanction of the ²[State Government]—

(a) incur expenditure beyond the limits of the municipality—

(i) in the acquisition of land, or

(ii) in the construction, maintenance or repair of works,

for the purpose of obtaining a supply of water or of lighting required for the inhabitants of the municipality or for establishing places for the disposal of the dead or of establishing slaughter-houses or places for the disposal of night-soil or sewage or carcasses of

Power to Commissioners to incur expenditure beyond the limits of the municipality.

¹Clauses (xxxiva) and (xxxivb) were inserted by sec. 27(2) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²See foot-note 2 on page 297, *ante*.

[Ben. Act XV]

*(Part III.—Chapter IV.—Municipal Property and Finance.—
Sec. 109.)*

animals beyond the said limits or for drainage works or for dairy-farms and grazing-grounds or for any other purpose calculated to promote the health, safety or convenience of the inhabitants of the said municipality ; or

- (b) make a contribution towards expenditure incurred by the Commissioners of any other municipality or incurred out of any public funds for any of the purposes mentioned in section 108 or for measures affecting the health, comfort or convenience of the public and calculated to benefit the residents within the limits of the contributing municipality or towards the salary of any officer under any other authority whose services are employed by them ; or

- ¹(bb) make a contribution to the National Defence Fund created by the Central Government for purposes relating to the defence of India :

Provided that any such contribution made before the commencement of the Bengal Municipal (Amendment) Act, 1963, shall be deemed to be and to have always been validly made as if that Act had come into force when such contribution was made ; or

Ben. Act VI
of 1963.

- (c) create scholarships tenable outside the limits of the municipality :

Provided that nothing in this section, or in any other provision of this Act, shall be deemed to make it unlawful for the Commissioners of a municipality, when with such sanction as aforesaid they have constructed works beyond the limits of the said municipality for the supply of water or lighting or for drainage as aforesaid,—

- (a) to supply or extend to, or for the benefit of any person or buildings or lands in any place, whether such place is or is not within the limits of the said municipality, any quantity of water or of gas or electric current not required for the purposes of this Act within the said municipality or the advantages afforded by the system of such drainage works, on such terms and conditions, with regard to payment and to the continuance of such supply or advantages as shall be settled by agreement between the Commissioners and such person or the owner or occupier of such buildings or lands ; or
- (b) to incur any expenditure, on such terms with regard to payment as may be settled as aforesaid, for the construction, maintenance, repair or alteration of any connection pipes or other works necessary for the purpose of such supply or for the extension of such advantages.

¹Clause (bb) was inserted by sec. 2 of the Bengal Municipal (Amendment) Act, 1963 (West Ben. Act VI of 1963).

of 1932.]

(Part III.—Chapter IV.—Municipal Property and Finance.—
Secs. 110, 111.)

110. The ¹[State Government] or any local authority may, at any time with the consent of the Commissioners, transfer to them the management of any institution or the execution of any work not provided for by this Act and it shall thereupon be lawful to the Commissioners to undertake the management of such institution or the execution of such works :

Objects
not
provided
for by
this Act.

Provided that in every such case the funds necessary for such management or execution shall be placed at their disposal by the ¹[State Government] or by the local authority concerned.

111. Notwithstanding anything contained in section 108—

(1) all moneys collected, received or recovered by the Commissioners, whether as taxes ²* * or for the execution of works, for or in any respect relating to—

Restric-
tion on
applica-
tion of
moneys
received
for certain
purposes.

(i) the water-supply ;

(ii) the lighting system ;

(iii) the cleansing of private latrines, urinals and cess-pools and conservancy ;

shall, after deduction of such proportionate share of the cost of collection and supervision as the Commissioners at a meeting may fix, be applied in defraying the expenses respectively—

(a) of making, extending or maintaining the water-supply,

(b) of making, extending or maintaining the lighting system,

(c) of cleansing latrines, urinals and cess-pools and of conservancy,

as the case may be, and in repaying or paying interest on debts incurred in connection with the said purposes :

Provided that the ¹[State Government] may at any time on the request of the Commissioners authorize the expenditure of surplus moneys accrued in respect of any of the services mentioned in sub-clauses (i), (ii) and (iii) of this clause on any other of the services mentioned in those sub-clauses or for general purposes :

Provided also that before authorizing such expenditure the ¹[State Government] shall give an opportunity for the submission of any objection to such expenditure by any rate-payer in the municipality and shall consider such objection ; and

(2) money which has been received by the Commissioners on account of any hospital or dispensary, or for any other specified purpose, or directed by them to be applied to the establishment or maintenance of any hospital or dispensary or any other specified purpose shall not, except as provided in clause (1), be expended on any other object.

¹See foot-note 2 on page 297, ante.

²The words "or fines" were omitted by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Part III.—Chapter IV.—Municipal Property and Finance.—
Secs. 112—114.)

The Budget.

Annual
estimates
to be
prepared.

¹112. At least two months before the close of the year, the Commissioners shall have prepared a complete account of the actual and expected receipts and expenditure for that year together with a budget estimate of the income and expenditure of the municipality for the next year.

Accounts
and
estimates
to be
published.

113. Copies of the accounts and estimates referred to in ²* section 112 and translations thereof in the vernacular of the district shall be lodged in the office of the Commissioners.

During fourteen days after the estimates shall have been so lodged in the said office, of which due notice shall be locally published, the estimates and translations in the vernacular of the district shall be open to inspection at all reasonable times by any person paying municipal rates, tolls, fees or taxes to such municipality who may desire to inspect the same.

Any written suggestion which may be deposited in the office of the Commissioners shall be recorded and laid before them for consideration ³[at the special meeting referred to in sub-section (1) of section 113A.]

Accounts
estimates
and
sug-
ges-
tions to
be laid
before the
Commis-
sioners.

⁴113A. (1) The accounts and estimates referred to in section 112, together with any written suggestion deposited under section 113, shall be laid before the Commissioners at a meeting specially convened for the purpose at least one month before the close of the year.

(2) Subject to the provisions of section 116, the Commissioners shall, at such meeting, decide upon the appropriations and the ways and means contained in the budget estimate and, by resolution, sanction a budget which shall be submitted to the ⁵[State Government] or to such officer or officers as the ⁶[State Government] may, by order, direct in this behalf.

(3) Subject to the like provisions, the Commissioner may vary or alter from time to time, as circumstances may render desirable, by special resolution, the budget sanctioned under sub-section (2).

The
revised
budget.

114. As soon as may be after the first day of October, a revised budget for the year shall be framed and such revised budget shall, so far as may be, be subject to all the provisions applicable to a budget made under ⁷[sections 112, 113 and 113A.]

¹Section 112 was substituted for the original section 112 by sec. 17 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²The words, brackets and figure "sub-section (1) of" were omitted by sec. 18(1) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³These words, figures, brackets and letter were substituted for the words "at the next meeting" by sec. 18(2), *ibid.*

⁴Section 113A was inserted by sec. 19, *ibid.*

⁵See foot-note 2 on page 297, *ante.*

⁶These words, figures and letter were substituted for the word and figures "section 112" by sec. 20 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

of 1923.]

(Part III.—Chapter IV.—Municipal Property and Finance.—
Secs. 115—118.)

115. In framing a budget the Commissioners shall provide for the maintenance of such minimum closing balance (if any) as the ¹[State Government] may, by order, prescribe, for the service of municipal loans and for carrying out any duty or obligation specifically imposed upon them under this Act or any other enactment.

Minimum closing balance shown in budget.

116. Where, in the opinion of the ¹[State Government], the condition of indebtedness of any municipality is such as to make the control of Government over its budget desirable, the ¹[State Government] may, by order declaring that such is the case, direct that the budget of such municipality shall be subject to the sanction of the ¹[State Government] or of the officer to whom it is to be submitted under the provisions of sub-section (2) of ²[section 113A], as the case may be, and that the power to vary or alter the budget under sub-section (3) of ³[section 113A] shall be subject to conditions to be prescribed by rule.

Budgets of indebted boards.

117. (1) Where a budget has been passed the Commissioners shall not incur any expenditure under any of the heads of the budget, other than a head providing for the refund of taxes, in excess of the amount passed under that head without making provision for such excess by the variation or alteration of the budget.

Prohibition of expenditure in excess of budget.

(2) Where any expenditure under any head providing for the refund of taxes is incurred in excess of the amount passed under that head, provision shall be made without delay for such expenditure by the variation or alteration of the budget.

118. If any work is estimated to cost above ten thousand rupees, the ¹[State Government] may require the plans and estimates of such work to be submitted for its approval, or for the approval of any ³[servant of the Government] before such work is commenced; and may require statements of the progress and completion of such work, with accounts of the expenditure on the same, to be submitted from time to time, in such form as it may prescribe, for its approval, or for the approval of such officer.

Power of State Government, if work estimated to cost more than ten thousand rupees.

⁴*Explanation.*—Nothing in this section shall apply to the purchase of a motor vehicle the price of which does not exceed fifteen thousand rupees.

¹See foot-note 2 on page 297, *ante*.

²This word, figures and letter were substituted for the word and figures "section 112" by sec. 21 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³The words "servant of the Crown" were originally substituted for the words "officer of Government" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴This *Explanation* was added by sec. 10 of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

(Part III.—Chapter IV.—Municipal Property and Finance.—
Secs. 119—121.)

III—GENERAL.

*Disposal of Municipal Fund and property, on division, union,
withdrawal or revision of boundaries of municipalities.*

Apportionment and disposal of municipal property upon a division or union of municipalities.

Disposal of fund and property on exclusion of local area from municipality or withdrawal of municipality from Act.

119. When two or more municipalities are united or a municipality is divided or the boundaries of two or more municipalities are revised by a notification under section 8, the Municipal Funds or Fund and all property vested in the Commissioners of the municipalities or municipality concerned shall be consolidated, or apportioned in such manner as the ¹[State Government] may direct.

120. (1) When a local area is excluded from a municipality by a notification under clause (c) or clause (f) of section 8, the ¹[State Government] shall, after consulting the Commissioners, frame a scheme determining what portion of the balance of the Municipal Fund and other property vested in the Commissioners shall vest in ²[the State Government] and in what manner the liabilities of the Commissioners shall be apportioned between the Commissioners and the ¹[State Government]; and on the publication of such scheme in the ³[Official Gazette] such property and liability shall vest and be apportioned accordingly.

(2) When the whole area comprised in any municipality is withdrawn from the operation of this Act by a notification under clause (b) of section 8, the balance of the Municipal Fund and all other property at the time of the publication of the notification vested in the Commissioners shall vest in ⁴[the State Government] and the liabilities of the Commissioners shall be transferred to the ¹[State Government].

(3) *Omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.*

121. [Audit of accounts.]—*Omitted by sec. 28 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).*

¹The words "Provincial Government" were originally substituted for the words "Secretary of State for India in Council" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "for the purposes of the Province" were first substituted for the words "the benefit of the inhabitants of the local areas" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the words "the State Government" were substituted for the words "His Majesty for the purposes of the Province" by paragraph 8 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

³See foot-note 2 on page 301, *ante*.

⁴The words "for the purposes of the Province" were first inserted after the words "His Majesty" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the words "the State Government" were substituted for the words "His Majesty for the purposes of the Province" by para. 3 and the Eleventh Schedule of the Adaptation of Laws Order, 1950.

of 1932.]

(Part III.—Chapter IV.—Municipal Property and Finance.
—Chapter IVA.—Audit.—Secs. 122, 122A.)

Rules as to the Municipal Fund and property.

122. The ¹[State Government] may make ²rules—

Power to
make
rules.

- (a) to regulate the application of the Municipal Fund to the purposes to which it is applicable ;
- (b) to regulate the keeping, checking and publication of accounts and the periodical audit thereof ;
- (c) to regulate the preparation of the budget estimate and the expenditure of money for purposes provided therein ;
- (d) to provide for the retention of adequate working and closing balances ;
- (e) to provide for the preparation of plans and estimates for works referred to in section 118 to be partly or wholly constructed at the expense of the Commissioners, and to determine the persons by whom, and the conditions subject to which, such plans and estimates are to be sanctioned ;
- (f) to regulate the preparation, submission and publication of returns, statements and reports by the Commissioners, and to prescribe registers and forms ; ³*
- (g) to determine the persons by whom orders for payment of money from the Municipal Fund may be signed, how such payments shall be made and by whom receipts ⁴[may be given ; and]
- ⁵(h) to provide for the supply of certified copies of municipal records to the public and the levy of fees for such supply.

⁶CHAPTER IVA.

AUDIT.

⁶122A. (1) The accounts of Municipal Funds shall be examined and audited by an auditor appointed in that behalf by the State Government at such time, to such extent and in such manner as the State Government may prescribe.

Audit of
accounts
of
Municipal
Funds.

(2) An auditor appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

(3) The State Government may direct that the whole or any portion of the cost of audit as determined by it including the

Act XLV
of 1860.

¹See foot-note 2 on page 297, *ante*.

²For the Bengal Municipal Account Rules, see notification No. 6499M., dated 21. 11. 35, published in the *Calcutta Gazette*, of 1935, Part I, pages 2095-2261, as amended from time to time.

³The word "and" was omitted by sec. 29(1) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

⁴These words were substituted for the words "may be given" by sec. 29(2), *ibid*.

⁵Clause (h) was added by sec. 29(3), *ibid*.

⁶Chapter IVA comprising sections 122A to 122L was inserted by sec. 30, *ibid*.

[Ben. Act XV]

(Part III.—Chapter IVA.—Audit.—Secs. 122B—122E.)

salary of the auditor, shall be paid from the Municipal Fund within such time as it may fix.

Submis-
sion of
accounts
to audit.

¹122B. The Chairman shall produce or cause to be produced to the auditor all such accounts of the Municipal Fund as may be required by the auditor.

Powers of
auditors.

¹122C. For the purposes of an audit under this Act, an auditor may—

- (1) require in writing the production before him of any document or the supply of any information which he considers to be necessary for the proper conduct of the audit ;
- (2) require in writing the personal appearance before him of any person accountable for, or having the custody or control of, any such document or having, directly or indirectly, and whether by himself or his partner, any share or interest in any contract made with, by or on behalf of Commissioners ; and
- (3) require any person so appearing before him to make and sign a declaration with respect to any such document or to answer any question or prepare and submit any statement.

Penalty.

¹122D. (1) Any person who neglects or refuses to comply with a requisition made by an auditor under section 122C, within such time or such extended time as may be specified, shall, on conviction by a Court, be punishable with fine which may extend to one hundred rupees in respect of each item included in the requisition.

(2) No complaint in respect of an offence punishable under sub-section (1) shall be made except with the previous sanction in writing of the State Government.

(3) No Magistrate other than a Magistrate of the first or second class shall try an offence punishable under sub-section (1).

Audit
report.

¹122E. (1) Within three months from the date on which an audit under this Act is completed, the auditor shall prepare a report on the accounts audited and shall send the report to the Chairman and a copy thereof to the State Government.

(2) The auditor shall include in the report a statement showing—

- (a) any material impropriety or irregularity which he may observe in the expenditure or in the recovery of monies due to the Commissioners or in the accounts of the Municipal Fund ;

¹ See foot-note 6 on page 365, *ante*.

of 1932.]

(Part III.—Chapter IVA.—Audit.—Sec. 122F.)

- (b) any loss or waste of money or other property owned by or vested in the Commissioners which has been caused by neglect or misconduct on the part of the Commissioners or their employees.

¹122F. (1) Within three months from the receipt of the report referred to in section 122E, the Commissioners at a meeting shall remedy any defect or irregularity pointed out in the report and shall report to the auditor the action taken by them. In their report the Commissioners shall give reasons or explanations for not remedying any defect or irregularity.

Action by
Commis-
sioners
and by
State
Govern-
ment.

(2) If, within the period prescribed in sub-section (1), no report is received from the Commissioners by the auditor or if the reason or explanation given by them for not remedying any defect or irregularity as aforesaid is not considered sufficient by the auditor, the auditor shall, if he has not already exercised or does not propose to exercise the powers conferred upon him by section 122G, submit to the State Government a statement of the facts of the case within such time and in such manner as the State Government may prescribe.

(3) On receipt of a statement under sub-section (2), the State Government may issue to the Commissioners such order as it may think fit, which shall not be questioned, and the Commissioners shall comply with the order within the period specified therein.

(4) If the Commissioners fail to comply with the order within the period specified therein, the State Government may appoint a person to carry out the order, and may determine the remuneration payable to such person, and may direct that such remuneration and any cost incurred in carrying out the order shall be paid from the Municipal Fund.

(5) A person appointed under sub-section (4) shall, for the purpose of carrying out the order, exercise any of the powers which might have been exercised by the Commissioners or the Commissioners at a meeting under any law for the time being in force.

¹See foot-note 6 on page 365, *ante*.

[Ben. Act XV]

(Part III.—Chapter IVA.—Audit.—Secs. 122G, 122H.)

Power of auditor to disallow any illegal payment or loss incurred by negligence or sum not brought into account.

¹122G. (1) The auditor, after giving the persons concerned an opportunity to submit an explanation within a time to be specified by him and after considering any such explanation, shall disallow every item of account contrary to law and surcharge the same on the person making or authorising the making of the illegal payment and shall charge against any person responsible for the amount of any loss incurred by the negligence or misconduct of that person and shall in every such case certify the amount due from such person :

Provided that the auditor may in his discretion waive the charge in cases where the amount involved does not exceed twenty-five rupees.

(2) For the purposes of this section, any Commissioner or member of a Standing Committee or a Joint Committee or a member associated with a Committee under section 90 who is present at a meeting at which a motion or resolution is passed authorising any expenditure which is subsequently disallowed under sub-section (1) or authorising any action which results in any such expenditure, shall be deemed to be a person authorising such expenditure if he votes in favour of such motion or resolution, and all persons so voting shall be held jointly and severally liable for such expenditure.

(3) The auditor shall record in writing his reasons for every disallowance, surcharge and charge made under sub-section (1) and shall, in such manner as may be prescribed, send a certificate of the amount due and a copy of the reasons for his decision to the person in respect of whom the certificate is made, and shall also furnish copies thereof to the Chairman and the State Government.

(4) The State Government may, of its own motion and within one year from the receipt by it of the copy of the certificate, set aside or modify any disallowance, surcharge or charge and any certificate in respect thereof made by the auditor.

Appeal.

¹122H. (1) Any person from whom any sum has been certified by the auditor to be due under section 122G may, within three months from the receipt by him of the certificate,—

(a) apply to the District Judge to set aside or modify the disallowance, surcharge or charge in respect of which the certificate was made, and the District Judge after taking such evidence as he considers necessary, may confirm, set aside or modify the disallowance, surcharge or charge and the certificate, and may make such order as to costs as he may think proper in the circumstances ; or

¹See foot-note 6 on page 365, ante.

of 1932.]

(Part III.—Chapter IVA.—Audit.—Secs. 122I, 122J.)

(b) in lieu of making an application under clause (a), appeal to the State Government, who may pass thereon such order as it thinks fit, and such order shall be final.

(2) Where a person referred to in section 122G, sub-section (2), who has been surcharged as authorising an illegal expenditure appeals to the State Government under this section, the State Government shall set aside such surcharge if it is proved to its satisfaction that such person voted for the resolution or motion in good faith.

¹122I. (1) The sum certified by the auditor to be due from any person under section 122G or where an application is made under clause (a) of sub-section (1) of section 122H or an appeal is made under clause (b) of that sub-section such sum as may be decreed or ordered by the Court or the State Government to be due from such person shall, within three months of the date of certification, decree or order, as the case may be, be paid by such person to the Commissioners who shall credit the sum to the Municipal Fund.

Payment of certified sums.

(2) Any sum not paid in accordance with the provisions of sub-section (1) shall be recoverable as a public demand and the Collector of the district shall, for the purposes of section 4 of the Bengal Public Demands Recovery Act, 1913, be deemed to be the person to whom such demand is payable.

Ben. Act
III of
1913.

(3) The Collector of the district shall pay to the Commissioners any sum recovered by him under sub-section (2).

¹122J. (1) All expenses incurred by the Commissioners in complying with any requisition of an auditor under section 122C and in prosecuting an offender under section 122D shall be paid from the Municipal Fund.

Certain costs and expenses payable out of Municipal Funds.

(2) All costs allowed by the District Judge against an auditor under section 122H, and all expenses incurred by the Collector of the district in connection with the proceedings for recovery of any sum under sub-section (2) of section 122I from a person, if not recovered from the person shall be paid from the Municipal Fund.

(3) If the Commissioners fail to pay from the Municipal Fund any costs or expenses referred to in sub-sections (1) and (2) within such period as may be determined by the State Government in this behalf, the State Government may attach the Municipal Fund or any portion thereof.

(4) After such attachment no person except an officer appointed in this behalf by the State Government shall in any way deal with the attached fund or portion thereof, but

¹See foot-note 6 on page 365, ante.

[Ben. Act XV]

(Part III.—Chapter IVA.—Audit.—Secs. 122K, 122L.)

such officer may do all such acts in respect thereof as the Commissioners might have done if the attachment had not taken place, and may apply the proceeds of the fund in satisfaction of the costs and expenses due, the interest accruing in respect of such costs and expenses and any additional expenses resulting from the attachment and any subsequent proceedings : provided that no such attachment shall defeat or prejudice any charge or debt for which the fund attached was previously liable in accordance with law but all such prior charges and debts shall be paid out of the proceeds of the fund before any part of the proceeds of the funds is applied to the satisfaction of the costs and expenses payable to the State Government under this section.

Certain
expenses
not charge-
able to
Municipal
Funds
without
previous
sanction.

¹122K. The Commissioners shall not incur any expenditure in connection with any application or appeal against a surcharge or charge in respect of which a certificate is issued by the auditor without the previous sanction of the State Government.

Power to
make rules.

¹122L. (1) The State Government may, after previous publication, make rules for carrying out the purposes of this Chapter and matters ancillary thereto.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the manner and form in which the accounts of the Municipal Fund shall be maintained ;
- (b) the powers and duties of the auditor and the procedure to be followed by him and the time and place at which such audit shall be held ;
- (c) the agency by which and the manner in which prosecutions under sub-section (1) of section 122D shall be instituted ;
- (d) the period within which and the manner in which the statement referred to in sub-section (2) of section 122F shall be submitted ;
- (e) the manner of sending a certificate under sub-section (3) of section 122G and the form of such certificate.

¹See foot-note 6on page 365, ante.

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 123, 123A.)

CHAPTER V.

MUNICIPAL TAXATION.

Imposition of taxes.

123. (1) The Commissioners may, from time to time, at a meeting convened expressly for the purpose, subject to the provisions of this Act, impose within the limits of the municipality the following rates, taxes, tolls and fees, or any of them :—

Power to impose taxes.

- ✓ (a) a rate on holdings situated within the municipality assessed on their annual value ;
- (b) a water-rate on the annual value of holdings ;
- (c) a lighting-rate on the annual value of holdings ;
- (d) a conservancy, latrine and drainage rate (hereafter known as the conservancy-rate) on the annual value of holdings ;
- (e) a tax on carriages and on horses and other animals mentioned in Schedule III ;
- (f) a tax on the trades, professions and callings specified in Schedule IV at such rates as may be fixed by the Commissioners within the maximum rates fixed in the said Schedule ;

Page 371-

In sub-section (1) of section 123, after clause (g), insert the following clause, namely:—

“(gg) a fee for grant of permission to erect a building other than a hut;”.

(Inserted by West Ben. Act VII of 1969, section 3.)

ie municipa-
d and main-
empowered
g in force.

[No. 6, dated the 1st May, 1970.]

be approved by the ¹[State Government], charge a fee in respect of the issue and renewal of any license which may be granted by them under this Act and in respect of which no fee or tax is leviable under sub-section (1).

at a meeting

²123A. The State Government may, by order, exempt from the payment of any rate, tax, toll or fee payable under the provisions of this Act, any diplomatic or consular mission of a foreign State and the diplomatic and consular officers of such mission.

Exemption of diplomatic or consular mission of a foreign State from payment of any rate, tax, toll or fee.

¹See foot-note 2 on page 297, ante.

²Section 123A was inserted by sec. 11 of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

[Ben. Act XV]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 124, 125.)

Restrictions on the imposition of the tax on holdings.

124. (1) The rate on holdings shall not be imposed—

(a) in any municipality included in Schedule V at a rate exceeding fifteen *per centum*, or in any other municipality at a rate exceeding ten *per centum*, on the annual value of holdings ;

(b) on any holding which is used exclusively as a place of worship to which the public have the right of free access without payment or as a mortuary or which is duly registered as a public burial or burning ground under this Act.

(2) The Commissioners at a meeting may, either wholly or partially, exempt ^{Page 372—} the rate on holdings ~~and~~ holding which is used exclusi

(3) Where ^{In sub-section (3) of section 124, for the words "six rupees" substitute the words "fifty rupees".} by any one or rupees, the rate on holdings of the (Substituted by West Ben. Act VII of 1969, section 4.)

(4) The ^[No. 6, dated the 1st May, 1970.] Commissioners, at any time, include in, or exclude from, Schedule V the name of any municipality.

Restrictions on the imposition of the water and lighting-rates.

125. (1) The imposition of a water-rate or of a lighting-rate shall be subject to the following restrictions, namely,—

(a) that the rate shall be imposed only on holding within an area for the supply of water to which or for the lighting of which, as the case may be, a scheme involving the laying of pipes, wires, cables or other similar apparatus has been sanctioned by the ¹[State Government] :

Provided that where the Commissioners—

(i) distribute water by means of water-carts or other like agency or provide a water-supply, approved by the ¹[State Government], by means of wells or tanks or other reservoirs, or

(ii) provide acetylene lamps, or such other means of lighting as may be approved by the ¹Government.

Page 372—

In clause (b) of sub-section (1) of section 125, for the words "consisting only of tanks", substitute the words, figures, letter and brackets "referred to in clause (b) of sub-section (1) of section 124 or consisting only of tanks".
(Substituted by West Ben. Act XVI of 1966, section 5.)
[No. 4, dated the 1st May, 1970.]

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Sec. 126.)

holding, no part of which is within a radius, to be fixed by the Commissioners at a meeting, from the nearest standpipe or other supply of water available to the public ;

(c) that the water-rate shall not be levied at more than seven-and-a-half *per centum*, and the lighting-rate at more than three *per centum*, on the annual value of holdings;

(d) that the rate shall not be leviable until a supply of water has been provided in the area to be supplied, or until the lamps in the area to be lighted have been lighted, as the case may be.

(2) Nothing in this section shall prevent the Commissioners at a meeting from making any special arrangement consistent with this Act for a supply of water or electric current or gas to persons residing beyond the radius fixed by the Commissioners at a meeting and for the levy of charges for the same.

(3) With the sanction of the Commissioners at a meeting the amount of the water-rate may vary with the distance of holdings from the nearest standpipe or other sources of water-supply, and the amount may be higher in the case of premises to which communication lines are attached than in the case of other premises.

Page 373—

In sub-section (1) of section 126, after clause (a), insert the following clause, namely:—

“(a1) that the rate shall not be imposed on any holding referred to in clause (b) of sub-section (1) of section 124 ;”.

Restrictions on the imposition of the conservancy-rate.

(Inserted by West Ben. Act XVI of 1966, section 6.)

[No. 4, dated the 1st May, 1970.]

of private latrines, urinals and cesspools within such area ;

(c) that the rate shall not be levied at more than ³[ten *per centum*] on the annual value of any holding.

³(1A) A rebate of twenty-five *per centum* of the conservancy-rate levied on a holding shall be allowed if the holding is provided with one or more sanitary-type latrines and with no service-privy or service-urinal.

(2) The Commissioners at a meeting at their discretion may compound for any period not exceeding one year with the person liable to pay the rate on any railway premises or on any premises used as a mill, factory, dockyard, workshop, *cool*-depot, school, hospital, market, court-house or other similar place for a

¹See foot-note 2 on page 297, *ante*.

²These words were substituted for the words “seven *per centum*” by sec. 12(a) of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

³Sub-section (1A) was inserted by sec. 12(b), *ibid*.

(Part III.—Chapter V.—Municipal Taxation.—Sec. 126.)

certain sum to be paid by such person in lieu of the rate or, in the case of such premises or places may in lieu of levying the rate on the annual value of the holding levy it at a certain amount per head, to be fixed by the Commissioners at a meeting, on the number of persons living within or habitually resorting to such premises or places.

Page 374—

In sub-section (3) of section 126, for the words "one-fourth of the percentage", substitute the words "three-fourth of the percentage".

(Substituted by West Ben. Act VII of 1969, section 5.

[No. 6, dated the 1st May, 1970.]

tion of the Commissioners that premises are served, cleansed and kept in a satisfactory condition by an establishment maintained at his own cost, and that the sewage therefrom undergoes such treatment at his cost, by means of septic tanks or other similar works constructed to the satisfaction of the Commissioners, as to render the effluent innocuous and inoffensive and capable of being discharged into the municipal drains, and the Commissioners shall levy such rate accordingly :

¹Provided that the exemption from paying the full rate conferred under this sub-section—

- (i) shall not apply where the Commissioners have, before the conservancy arrangements referred to in this sub-section were made, provided an underground sewerage system which is, in the opinion of the ²[State Government], of sufficient capacity and in every respect adequate for the efficient treatment and disposal of all sewage in the area served by it ;
- (ii) shall, where the Commissioners have, after the conservancy arrangements referred to in this sub-section were made, provided an underground sewerage system which in the opinion of the ²[State Government], fulfils the requirements specified in clause (i) terminate after a term of years to be determined by the ²[State Government] in each case ;
- (iii) may, subject to the approval of the ²[State Government] be granted by the Commissioners at a meeting to a mill, factory, dockyard, workshop, cooly-depot, school, hospital, market, court-house or other similar place which contributes or has contributed towards the construction of an underground sewerage system.

¹This proviso was substituted for the original proviso by sec. 22 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²See foot-note 2 on page 297, ante.

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 127—130.)

127. The Commissioners may, for the purposes of conservancy, or for the levy of the conservancy-rate, by a notice in writing, require the owner or occupier of any holding to furnish, within a time to be specified in the notice, a true and correct list of the number of persons living within, or habitually resorting to, such holding.

Power to call for list of occupants of holdings.

Assessment of rates on the annual value of holdings

128. (1) The annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let

Annual value of holdings.

In section 128,—

- (a) omit the proviso to sub-section (2);
- (b) in sub-section (3), for the word "machinery", substitute the words "plant or machinery excepting those enumerated in Schedule IIIA";
- (c) to sub-section (3), add the following proviso, namely:—

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ich may be
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the time of
e land com-

"Provided that—

- (a) if any dispute arises as to whether any parts of a plant or a combination of plant and machinery should be included in estimating the annual value

or buildings
percentage
much of the
not exceed
mmissioners

of any holding as coming within the enumeration in Schedule IIIA, the Commissioners at a meeting may, of their own motion or at the request of the owner or occupier of such holding, refer the dispute to a referee named in a panel of referees appointed by the State Government in this behalf;

(21) of sec-

Power of Commissioners to decide questions arising out of the definition of "holding".

- (b) the referee shall thereupon decide the dispute after giving the Commissioners, the owner and the occupier an opportunity of being heard, and after considering the facts and circumstances of the case, and, if necessary, after inspection of the plant or machinery, and the decision of the referee shall be final and conclusive;

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- (c) the costs of the reference shall be borne by the Commissioners and the owner or both the owner and the occupier in such proportion as the referee may direct."

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Assessment in case of land or building subdivided into separate shares.

(Omitted, substituted and added by West Ben. Act VII of 1969, section 6.)

ore shares
ult of such

(No. 6, dated the 1st May, 1970.)

West Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

by sec. 23

*These words were substituted for the words "one lakh" by sec. 13(a) of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

*This word was substituted for the word "one-fourth" by sec. 13(b), *ibid.*

[Ben. Act XV]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 131, 132.)

subdivision there is a separate allotment of such land, building or portion into two or more separate portions, which are not entirely independent, the Commissioners may, if they think fit, apportion the assessment among the shareholders according to the value of their respective shares without assigning any separate number ;

- (ii) if, as the result of such subdivision, there are separate allotments of such land, building or portion and, if such allotments are made entirely independent and capable of separate enjoyment but not in conformity with the provisions of this Act or of any rules or by-laws made thereunder relating to buildings, the Commissioners may, if they think fit, assess such portions separately after assigning to them separate numbers :

Provided that by such separate assessment the total assessment for the entire premises shall not be increased ;

- (iii) if such separated portions of such land, building or portion are, or are made, entirely independent and capable of separate enjoyment in conformity with the provisions of this Act or of any rules or by-laws made thereunder, relating to buildings, the Commissioners shall assess each portion separately by assigning a separate number thereto :

Provided that by such separate assessment the total assessment for the entire premises shall not be increased :

Provided also that such apportionment or separation of the numbers and assessment, as the case may be, shall remain in force and the rate shall be levied accordingly until the expiration of the said period.

Assessment
in case of
land or
building
being
amalgamated.

131. If any land or building, bearing two or more municipal numbers, or portions thereof, be amalgamated into one or more new premises, the Commissioners shall assess them on amalgamation after assigning to them one or more numbers as the case may be.

Page 376—

To section 132, add the following proviso, namely :—

“Provided that where any holding owned by the State Government is in the occupation of any person under an agreement with the State Government entitling such person to have the ownership of such holding transferred to him on the performance by him of the terms and conditions of the agreement, any rate assessed on the annual value of such holding shall be payable by such person.”.

Taxes by
whom
payable.

(Added by West Ben. Act XVI of 1966, section 7.)

[No. 4, dated the 1st May, 1970.]

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 133—136.)

133. When it has been decided to impose any rate to be assessed on the annual value of holdings, the assessor, after making such inquiries as may be necessary, shall determine the annual value of all holdings within the municipality in the manner provided in this chapter, and shall enter such value in a valuation list.

Preparation of valuation list.

134. The assessor, in order to prepare the valuation list, may, whenever he thinks fit, by notice require the owners or occupiers of all holdings to furnish him within one week with true and correct returns of the rent or annual value thereof and a true and correct description of the holdings containing such particulars as the assessor may direct, and the assessor, or any person authorized by him in writing in that behalf, may enter, inspect and measure any such holding at any time between sunrise and sunset :

Returns required for ascertaining annual value.

Provided that at least twenty-four hours' previous notice of the intention to enter, inspect and measure any holding shall be given to the occupier thereof, unless he waives his right to such notice.

135. Subject to the provisions of this Act, the Commissioners, at a meeting to be held before the close of the year next preceding the year to which the rate will apply, shall determine the percentage on the valuation of holdings at which any rate on the annual value of holdings shall be levied, and the percentage so fixed shall remain in force until the Commissioners at a meeting shall determine some other percentage on the valuation of holdings at which the rate will be levied from the beginning of the next year :

Determination of percentage of rate on holdings.

Provided that, when this Act is first extended to any place, the first rate or rates shall be levied from the beginning of the quarter next after that in which the percentage has been fixed by the Commissioners at a meeting :

Provided further that, where the amount standing to the credit of the Commissioners in the Municipal Fund in any municipality is, in the opinion of the ¹[State Government], insufficient to meet the liabilities of the Commissioners, no decrease shall be made in the percentage of any rate levied by them without the previous sanction of the ¹[State Government].

136. As soon as possible after the percentage at which the rate or rates shall be levied for the next year has been determined under section 135, the Commissioners shall cause to be prepared ** * * an assessment list, which shall contain the following particulars and any others which the Commissioners may think proper to include :—

Preparation of assessment list.

- (a) the name of the street in which the holding is situated ;
- (b) the number of the holding on the register ;

¹ See foot-note 2 on page 297, *ante*.

² The words "by the assessor" were omitted by sec. 24(1) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

[Ben. Act XV

(Part III.—Chapter V.—Municipal Taxation.—Secs. 137, 138.)

- (c) a description of the holding ;
- (d) the annual value of the holding ;
- (e) the name of the owner * * * ;
- (f) the amount of rate payable for the year (each rate to be shown separately) ;
- (g) the amount of quarterly instalment ;
- (h) if the holding is exempted from assessment, a note to that effect.

Revision
and dura-
tion of the
list.

137. (1) A new valuation * * * list shall unless otherwise ordered by the * [State Government] be prepared, in the same manner as the * [original list], once in every five years.

(2) Subject to any alteration or amendment made under section 138 and to the result of any application under section 148 every valuation and assessment entered in a valuation or assessment list shall be valid from the date on which the list takes effect in the municipality and until the first day of April next following the preparation of a new list.

Amend-
ment and
alteration
of list.

Pages 378-379—

* In section 138,

(1) in sub-section (1), after clause (c), insert the following clause, namely :—

“(cc) by re-valuing or re-assessing ~~any~~ holding, the valuation or assessment of which ~~has~~ been set aside or declared to be void by an order of a Court; or” ;

(2) in sub-section (2), for the word, letters and brackets “(c) or (d)”, substitute the word, letters and brackets “(c),(cc) or (d)” ;

(3) to sub-section (4), add the following proviso, namely :—

Provided that an alteration made under clause (cc) of sub-section (1) shall take effect from the date on which the valuation or assessment which has been set aside or declared to be void would have taken effect.’

(Inserted, substituted and added by West Ben. Act XVI of 1966, section 8.)

[No. 4, dated the 1st May, 1970.]

“~~the~~ ~~lists~~” by sec. 20(2) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

* These words were inserted by sec. 31(1) (a) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

* The words “or co-occupier” and “or occupation”, respectively, were omitted by sec. 26(1)(a) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

* Clause (dd) was inserted by sec. 31(1)(b) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 139, 140.)

(e) where the percentage on the annual value at which any rate is to be levied has been altered by the Commissioners under the provisions of section 135, by making a corresponding alteration in the amount of rate payable in each case ; or

(f) by reducing, upon the application of the owner ^{1*} * the valuation of any holding which has been wholly or partly demolished or destroyed, or the value of which has been diminished from any cause beyond the control of the owner ^{1*} * the operation of which could not have been prevented with due precaution ; or

(g) by correcting any clerical or arithmetical error.

(2) The Commissioners shall give at least one month's notice to ²[the recorded owner or owners] of any alteration which the Commissioners propose to make under clauses (a), (b), (c) or (d) of sub-section (1) and of the date on which the alteration will be made.

(3) The provisions of sections 148 to 151 applicable to objections shall, so far as may be, apply to any objection made in pursuance of a notice issued under sub-section (2) and to any application made under clause (f) of sub-section (1).

(4) Every alteration made under sub-section (1) shall be signed by the Chairman, ³[Vice-Chairman or Secretary,] and subject to the result of an application under section 148, shall take effect from the beginning of the quarter next following that in which the alteration was made, but the Commissioners by such alteration shall not be deemed to have made a new or revised assessment list.

139. An entry in an assessment list shall be conclusive proof—

(a) for any purpose connected with a rate or rates to which the list refers, of the amount leviable in respect of any holding during the period to which the list relates, and

(b) for the purpose of assessing any other municipal rate, of the annual value of any holding during the said period.

140. (1) If any house belongs to one owner and the land on which it stands as also the adjacent land if any, usually occupied therewith, belongs to another, the Commissioners may treat such house and land as a single holding and assess them to rates accordingly.

(2) The total amount of the rate or rates shall be payable by the owner of the house, who shall thereafter be entitled to

Conclusive-
ness of
entries in
list.

Power to
assess
buildings
and lands
together
where land
is let on
a building
lease.

¹The words "or occupier" were omitted by sec. 26(1)(b) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²These words were substituted for the words "any person interested" by sec. 81(2) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

³These words were substituted for the words "or Vice-Chairman" by sec. 26(2) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

(Part III.—Chapter V.—Municipal Taxation.—Secs. 141, 142.)

deduct from the rent which he pays for the land such proportion of the rate or rates so paid by him as is equal to the proportion which such rent bears to the annual value of the holding.

(3) In case of dispute the Commissioners shall determine what amount the owners of the house and of the land shall pay respectively.

Power to
reduce
rates in
cases of
excessive
hardship.

141. Whenever, from the circumstances of the case, the levy of a rate or rates on any holding in the municipality would be productive of excessive hardship to the person liable to pay the same, the Commissioners at a meeting may reduce the amount payable on account of such holding, or may remit the same :

Provided that such reduction or remission shall not unless renewed by the Commissioners at a meeting, have effect for more than one year.

Remission
or refund
on account
of vacant
holdings.

142. (1) When any holding ¹[comprising of land and building] has been unoccupied and unproductive of rent for sixty or more consecutive days the Commissioners shall remit, and if the rate or rates have been paid, shall refund ²[one-half] of the amount due on account of such period :

Provided that—

(i) the person liable to pay the rate or rates or his agent has given to the Commissioners notice in writing of the vacancy and that the application for remission or refund is made within six months from the date on which such notice is delivered at the office of the Commissioners ; and

(ii) the amount of rate or rates to be remitted or refunded shall not be calculated from any date prior to the date of delivery of such notice.

(2) When any such holding as aforesaid consists of separate tenements, one or more of which has, or have been unoccupied and unproductive of rent for any period of not less than sixty consecutive days, the Commissioners may, subject to the proviso to sub-section (1), remit such portion (if any) of the rate or rates, not exceeding ³[one-half], as they may think equitable.

(3) The burden of proving the facts entitling any person to claim relief under this section shall be upon him.

(4) For the purposes of this section—

(i) neither the presence of a caretaker nor the mere storing in one room of an otherwise unoccupied dwelling-house of the furniture habitually used in it shall constitute

¹These words were inserted by sec. 14(a)(i) of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

²This word was substituted for the word "three-quarters" by sec. 14(1)(ii), *ibid.*

³This word within square brackets was substituted for the word "three-fourths" by sec. 14(b), *ibid.*

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 143—144A.)

occupation of the house, unless such house is maintained as a pleasure resort or as a temporary place of residence for a person ordinarily residing elsewhere, and

(ii) a house shall be deemed productive of rent if let to a tenant who has continuing right of occupation thereof, whether it is actually occupied by such tenant or not.

143. Every person who is the owner of any holding for which a remission or refund of the rate or rates has been made under section 142 shall give notice of the re-occupation of such holding within ten days of such re-occupation.

Owner to give notice of re-occupation.

144. (1) Whenever the title to or over any land or building of any person primarily liable for the payment of rates on such property is transferred, both the transferor and the transferee shall, within three months of the registration of the deed of transfer, if it be registered, or if it be not registered, within three months of its execution, or, if no instrument be executed, within three months of the actual transfer, give notice in writing of such transfer to the Chairman.

Notice to be given to the Chairman of all transfers of title of persons primarily liable to payment of rates.

(2) Every person primarily liable for the payment of rates on any land or building, who transfers his title to or over such property, without giving notice of such transfer to the Chairman, as aforesaid, shall, unless the Commissioners, on grounds of hardship arising out of special circumstances, otherwise direct, in addition to any other liability which he incurs through such neglect, continue liable for the payment of all such rates from time to time payable in respect of the said property until he gives such notice, or until the transfer shall have been recorded in the municipal books.

(3) Nothing in this section shall be held to diminish the liability of the transferee for the said rates or to affect the prior claim of the Commissioners for the recovery of the rates due thereupon and the Commissioners may revise the assessment list as against the transferee with effect from the date on which they are satisfied that the transfer was made.

¹144A. Every person succeeding to any land or building by inheritance shall within three months from the date of such succession give notice in writing of such succession to the Chairman and the provisions of sub-section (3) of section 144 shall apply *mutatis mutandis* to such a case.

Persons succeeding to lands or buildings to give notice to the Chairman.

¹Section 144A was inserted by sec. 27 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

(Part III.—Chapter V.—Municipal Taxation—Secs. 145, 146.)

General provisions relating to assessment.

Appoint-
ment of
assessors
of municip-
al rates.

145. (1) The ¹[State Government] shall prepare a list of persons qualified in its opinion to be appointed as municipal assessors.

(2) When a new valuation ²* * list is to be prepared for any municipality the Commissioners at a meeting shall appoint from the list referred to in sub-section (1) a person ³* * as an assessor for the purposes of this chapter, on such salary and with such establishment as may be fixed by them with the approval of the ¹[State Government].

(3) Notwithstanding anything in this section the ¹[State Government] may, ⁴* * at the request of the Commissioners at a meeting, appoint, or authorise the Commissioners at a meeting to appoint, any person or persons approved by the ¹[State Government] with or without salary to prepare the valuation ⁵* * list of such municipality.

Appoint-
ment of
assessor by
State
Govern-
ment in
case of
default.

146. (1) If the Commissioners fail to comply with the provisions of section 145 within such period as the ¹[State Government] may fix, the ¹[State Government] may appoint for such period as may be necessary a suitable person from among the persons included in the said list to prepare the valuation ⁵* * list of such municipality.

(2) If there is no person for the time being available for appointment as assessor from among the persons included in the list referred to in sub-section (1) of section 145, the Commissioners at a meeting, or in case of default by the Commissioners, the ¹[State Government], may appoint any person approved by the ¹[State Government] on such salary, for such period, and with such establishment as the Commissioners with the approval of the ¹[State Government], or the ¹[State Government] in the case of default, may determine.

(3) An assessor appointed by the ¹[State Government] under this section shall be paid monthly out of the Municipal Fund such salary and cost of establishment as may be fixed by the ¹[State Government].

¹See foot-note 2 on page 297, *ante*.

²The words "and assessment" were omitted by sec. 28(1) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

³The words "conversant with local conditions" were omitted by sec. 28(2), *ibid*.

⁴The words "in its discretion", were omitted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁵The words "and assessment" were omitted by sec. 29 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 147—149.)

147. (1) When the assessment list mentioned in section 136 has been prepared or revised, the Chairman shall sign the same and shall cause it to be deposited in the office of the Commissioners and shall give public notice of the place where the list may be inspected.

Publication
of notice of
ments.

(2) In all cases in which any property is for the first time assessed or the assessment is increased, the Chairman shall also give notice thereof to the owner or occupier of the property, if known.

148. (1) Any person who is dissatisfied with the amount assessed upon him or with the valuation or assessment of any holding, or who disputes his occupation of any holding, or his liability to be assessed, may apply to the Commissioners to review the amount of assessment or valuation or to exempt him from the assessment of rate.

Applica-
tion for
review.

(2) No such application shall be received after one month from the date of publication of the notice required under sub-section (1) of section 147, or the service of the notice required under sub-section (2) of that section or after the expiration of one month from the date of service of the first notice of demand for payment at the rate in respect of which the application is made, whichever period shall last expire.

1* * * * *

149. ²(1) Every application presented under section 148 shall be heard and determined by a Committee consisting of the Chairman and not less than two and not more than four Commissioners appointed by the Commissioners at a meeting :

Hearing
and deter-
mination
of applica-
tions by
committee.

Provided that in the case of municipality which is divided into wards under section 20, no Commissioner of the ward from which the application is made shall take part in the hearing or determination of such application.

(2) The committee shall give notice to the applicant of the time and place at which his application will be heard, and after taking such evidence and making such inquiry as it may deem necessary, in the presence of the objector or his agent if he appears, pass such orders as it thinks fit in respect of the application.

³(3) The quorum shall be fixed by the Commissioners at a meeting.

¹Sub-section (3) was omitted by sec. 80 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²Sub-section (1) was substituted for the original sub-section by sec. 15 of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

³Sub-sections (3), (4) and (5) were substituted for the original sub-section (3) by sec. 31(2) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

[Ben. Act XV]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 149A—153.)

¹(4) The decision in such cases of the Committee, or of a majority of the members present, shall be final.

¹(5) In case of equality of votes, the person presiding shall have a second or casting vote.

Municipal
Assess-
ment
Tribunal.

²149A. (1) The State Government may, by notification, appoint a Municipal Assessment Tribunal consisting of such person or persons as may be specified in the notification for the purpose of hearing applications for review presented under section 148.

(2) When a Municipal Assessment Tribunal is appointed under sub-section (1), all applications presented under section 148 shall notwithstanding anything contained in section 149, be heard by the Tribunal and the Tribunal shall pass such orders in such case as it thinks fit.

(3) An order of the Tribunal under sub-section (2) shall be

Page 384—

Assess-
ment to
be ques-
tioned only
under Act.

In section 150, omit the words, figure and brackets “or sub-section (6)”.

(Omitted by West Ben. Act XVI of 1966, section 10.)

[No. 4, dated the 1st May, 1970.]

Payment
of rate how
affected by
objections
to valua-
tion.

has been made under section 148 by
deter-
ment

(2)
vious
(q)

(b)

Page 384—

*After section 151, insert the following section, namely:—
“Payment of rate when assessment or valuation set aside.

151A. (1) When an assessment or valuation is set aside or declared to be void by an order of a Court, the rate shall notwithstanding anything contained in sub-section (2) of section 137, be paid on the previous assessment or valuation until a reassessment or revaluation is made under clause (cc) of sub-section (1) of section 138.

(2) If upon such reassessment or revaluation the previous assessment or valuation is altered, the provisions of sub-section (2) of section 151 shall apply in respect of any sum paid in excess or any deficiency.”

Office
hours for
payment
of taxes.

152.
Comm
being a
open f

Amount of
tax pay-
able, and
tax to be
paid in
advance.

153.
quently
the am
publishe
due from

(Inserted by West Ben. Act XVI of 1966, section 10.)

[No. 4, dated the 1st May, 1970.]

the amount
of any rate on the annual value

¹See foot-note 8 on page 388, ante.

²Section 149A was inserted by sec. 32 of the Bengal Municipal (Amendment) Act, 1965 (West Ben. Act XXVII of 1965).

³These words were added by sec. 38, *ibid.*

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 154, 155.)

of holdings. In case of such subsequent alteration the amount to which the assessment or rating is so altered shall be deemed to be the amount due.

(2) Such rate shall be payable in quarterly instalments and every such instalment shall be deemed to be due on the first day of the quarter in respect of which it is payable.

154. For all sums paid on account of any tax, toll, fee or rate under this Act a receipt stating the amount and the tax, toll, fee or rate on account of which it is paid shall be given, signed by the tax-collector, or by some other officer authorized by the Commissioners to grant such receipts.

Receipts
to be
given.

¹155. (1) As soon as may be after any sum has become due on account of any tax, toll, fee or rate, the Commissioners shall cause to be presented to the person liable a bill for the sum due.

Bill and
notice of
demand to
be pre-
sented.

(2) Every such bill shall contain a statement of the period and of the tax, toll, fee or rate for which the charge is made.

(3) The Commissioners at a meeting may by a resolution direct that a rebate of three and one-eighth *per cent.* of the amount of any bill shall be allowed if payment of the amount for which the bill has been presented under sub-section (1) is made into the municipal office within thirty days from such presentation, and thereupon rebate shall be allowed accordingly.

(4) If the said amount is not paid within thirty days from the date of presentation of the bill, a notice of demand in the prescribed form shall be served on the person liable. Such notice shall be signed by the Chairman, Vice-Chairman or any officer authorised by the Commissioners in that behalf and shall be served by a person authorised to receive payment :

Provided that no charge shall be made in respect of the service of such notice.

(5) On the amount of a bill remaining unpaid after its presentation, interest shall be payable at the rate of one pie per rupee per mensem on the said amount from the day next after the expiry of thirty days from the commencement of the quarter following that in which the bill is presented.

Explanation.—In calculating the interest payable under this sub-section, a fraction of a rupee in the amount of the bill on which interest is to be calculated shall—

(a) where it is less than eight annas, be left out of account, and

(b) where it is not less than eight annas, be taken as one rupee.

¹This section 155 was substituted for the original section 155 by sec. 84 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

(Part III.—Chapter V.—Municipal Taxation.—Secs. 156, 157.)

Levy by
distress on
failure to
pay tax,
toll, fee
or rate.

156. If any person, ¹[does not, within thirty days of the service of a notice of demand under sub-section (4) of section 155,] pay the sum due, either to the Commissioners at their office, or to some person authorized by them to receive the money, or show to the Commissioners sufficient cause for not paying the same, the amount of the arrear due, ²[along with interest and] with costs according to the prescribed scale of fees, may, at any time * * * *, be levied by distress and sale of any movable property belonging to the defaulter, except ploughs, plough-cattle, tools or implements of agriculture or trade, wherever found, or of any movable property belonging to any other person, subject to the same exceptions, which may be found within the holding in respect of which such defaulter is liable to such tax, toll, fee or rate :

Provided that, when the holding in respect of which the default is committed is a place of business and the movable property distrained is shown to the satisfaction of the Commissioners to have been left there for repairs or safe custody in the ordinary course of business, it shall be released :

Provided also that, if the said property or any part thereof belongs to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

Distress
how to
be made.

157. (1) Every warrant of distress and sale under section 156 shall be issued by the Commissioners, and shall be in the prescribed form.

(2) When a warrant of distress is issued it shall not be discharged before it is executed except upon payment of the sum due together with one-fourth of the costs referred to in section 156.

(3) Distress shall be made by actual seizure of movable property, and the officer charged with the execution of the warrant shall be responsible for the due custody thereof.

(4) Such officer shall make in the presence of two witnesses an inventory of all movable property seized under the warrant and shall give not less than ten days' previous notice of the sale, and of the time and place thereof by beat of drum, in the municipality or ward in which the property is seized, and by serving on the defaulter a notice in the prescribed form :

Provided that if the property is of a perishable nature, it may be sold at once with the consent of the defaulter, or without such consent at any time after the expiry of six hours from the seizure.

¹These words were substituted for the words "after service upon him of such bill and notice, does not, within fifteen days of the service of such notice," by sec. 35(1), of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²These words were inserted by sec. 35(2), *ibid.*

³The words "within one year after the date of service of the said notice" were omitted by sec. 35(3), *ibid.*

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 158—162.)

158. The officer charged with the execution of the warrant may, under the special order of the Chairman or Vice-Chairman, between sunrise and sunset, break open any outer or inner door or window of a house, in order to make the distress, if he has reasonable ground for believing that such house contains any movable property belonging to the defaulter, and if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance :

Officer
may
break
open
door.

Provided that he shall not enter or break open the door of any room appropriated to women, except after reasonable notice and opportunity given to enable the women to remove to some part of the premises where their privacy may be preserved.

159. (1) If the sum due be not paid with costs before the time fixed for the sale, or if the warrant be not discharged or suspended by the Commissioners, the movable property seized shall be sold by auction, at the time and place specified, in the most public manner possible, and the proceeds shall be applied in discharge of the arrears and costs.

Sale how
to be
conducted.

(2) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction.

(3) The tax-collector or other officer authorized by the Commissioners in that behalf shall make a return of all such sales to the Commissioners in the prescribed form.

160. If the Commissioners are unable to recover under section 159 the sum due with costs, the Magistrate may, on the application of the Commissioners, issue his warrant to any officer of his court for the distress and sale of any movable property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any movable property belonging to the defaulter within the jurisdiction of any other Magistrate exercising jurisdiction within ¹[West Bengal], and such other Magistrate shall endorse the warrant so issued, and cause it to be executed and the amount, if levied, to be remitted to the Magistrate issuing the warrant, who shall remit the same to the Commissioners.

Sale of
property
beyond
limits of
municipal-
ity.

161. The Commissioners shall cause a regular account to be kept of all distresses levied, and sales made, for the recovery of taxes, tolls, fees and rates under this Act.

Commis-
sioners to
account of
distresses
and sales.

***162.** (1) After a defaulter has been proceeded against under the foregoing provisions of this Chapter unsuccessfully or with

Power to
Commis-
sioners to
apply
certificate
procedure.

¹ See foot-note 3 on page 296, *ante*.

² This section 162 was substituted for the original section 162 by sec. 36 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

[Ben. Act XV

(Part III.—Chapter V.—Municipal Taxation.—Secs. 162A—165.)

only partial success, the sum due may be recovered by certificate under the Bengal Public Demands Recovery Act, 1913.

Ben. Act III
of 1913.

1* * *

Power to
Commissioners to
sue for
arrears.

³162A. (1) In the event of failure to recover the whole or any part of the sum due by certificate as prescribed in section 162 the Commissioners may sue the person liable to pay the same in any Court of competent jurisdiction.

(2) Notwithstanding any decision of any Court to the contrary, any proceeding instituted in accordance with the provisions of sections 156 to 162 and pending on the date of commencement of the Bengal Municipal (Second Amendment) Act, 1961 may be continued after such commencement and any such proceeding or any order made, anything done or any action taken therein, shall not, in any manner, be called in question merely on the ground that the Bengal Municipal (Second Amendment) Act, 1961 was not in force when such proceeding was instituted, such order was made, such thing was done or such action was taken.

West Ben.
Act XXIII
of 1961.

Irrecoverable taxes.

163. ³[(1)] The Commissioners ⁴[at a meeting] may order to be struck off the books the amount of any tax, toll, fee, rate or other money due under this Act which may appear to them to be irrecoverable.

²(2) In passing an order under sub-section (1) the Commissioners shall in each case briefly record the reasons therefor and a statement of the steps taken to recover the amount ordered to be struck off.

Certain
persons
prohibited
from pur-
chasing at
sales.

164. All Commissioners, municipal officers and servants, and all *chaukidars*, constables and other officers of police are prohibited from purchasing any property at any sale made under this chapter.

Recovery in special cases.

Recovery
from
occupier
of tax due
from non-
resident
owner and
deduction
from rent.

165. If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner is not resident within the municipality or the place of abode of such owner is unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct from the next and following payments of his rent, the amount which may be so paid by or recovered from him :

Provided that no arrear of rate shall be so recovered from the occupier of any holding if it has remained due from the owner thereof for more than one year or if it is due on account of any period during which such occupier was not in occupation of such holding :

¹Sub-section (2) was omitted by sec. 5 of the Bengal Municipal (Second Amendment) Act, 1961 (West Ben. Act XXIII of 1961).

²Section 162A was inserted by sec. 6, *ibid.*

³Section 163 was renumbered as sub-section (1) of that section by sec. 87 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955.)

⁴These words were inserted by sec. 37(1), *ibid.*

⁵Sub-section (2) was added by sec. 37(2), *ibid.*

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 165A—168.)

Provided also that if any such holding is occupied in severalty by more than one person, the sum recovered from any one of such persons shall not exceed such amount as shall bear to the total sum due the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of the holding.

¹165A. Where any holding is in the occupation of any person, not being the owner or occupier, as defined in section 3, of such holding the amount of any tax, toll, fee, rate or other money due under this Act and assessed on the annual value of such holding may be recovered from such person as if he were an occupier of such holding as defined in clause (36) of section 3 :

Recovery of tax from unauthorised occupier of holding.

Provided that no sum shall be recovered from such person if it is not due in respect of the period during which such person has been in occupation of the holding :

Provided further that the assessment or recovery made under this section shall not by itself be deemed to confer upon such person any right or title as the lawful occupier of the holding.

166. The purchaser of any holding or part of a holding in respect of which any sum is due at the time of purchase on account of any rate under this Act shall, subject to the provision of sub-section (2) of section 144, be liable for the said sum.

Liability of purchaser for vendor's share of rate.

167. The sum due on account of any rate under this Act from any person in respect of any holding shall subject to the prior payment of the land revenue (if any) due to the Government or of the rent (if any) due to a landlord under the Bengal Tenancy Act, 1885, thereupon, be a first charge upon the said holding.

Rate to be a charge on holdings.

VIII of 1885.

The tax on carriages, and on horses and other animals.

168. (1) When it has been determined that a tax on carriages, and on horses and other animals mentioned in Schedule III shall be imposed, the Commissioners at a meeting shall, subject to the provisions of section 199, make an order that the owner of every carriage, and every horse and other animals of the kind mentioned in the said schedule, which is kept or is used in the ordinary course of business within, or which is let for hire within or without the municipality, and is used in the ordinary course of business within it, shall pay the tax at the rate fixed under sub-section (2) in respect of such carriage, horse or other animal and they shall cause such order to be published in the manner prescribed.

Tax on carriages, horses and other animals.

(2) Such order shall be published at least one month before the beginning of the half-year in which such tax will first take effect ; and shall specify at what rates, not exceeding the rates given in the said schedule, such tax shall be levied.

¹Section 165A was inserted by sec. 98 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

[Ben. Act XV]

(Part III.—Chapter V.—Municipal Taxation.—Secs 169—171.)

(3) Such tax shall not be imposed on—

- (a) horses or ponies belonging to officers doing regimental duty at the rate of one animal for each officer ;
- (b) horses and other means of conveyance exempt from any municipal tax under section 34 of the Auxiliary Force Act, 1920, or under section 16 of the Indian Territorial Force Act, 1920 ;
- (c) carriages or animals ¹[belonging to the Government] or to the Commissioners or for keeping which for the execution of their duty an allowance is made ²[by the Central or any State Government] or by the Commissioners to any of their officers ;
- (d) animals used by, or exclusively for the purposes of, any regiment ;
- (e) horses or ponies used by police-officers, at the rate of not more than one for each officer ;
- (f) carriages the wheels of which do not exceed twenty-four inches in diameter ; and
- (g) carriages or animals kept for sale by any *bona fide* dealer in such carriages or animals, and not used for any other purpose.

XLIX of
1920.
XLVIII
of 1920.

Powers to
exempt
carriages
or class of
carriages
from
taxation.

169. In making an order under section 168 or by a subsequent order, the Commissioners at a meeting may exempt from the tax, imposed under section 168, any carriage or class of carriages mentioned in Schedule III.

Duration
of tax.

170. The order of the Commissioners imposing a tax under section 168 shall continue in force until rescinded and the tax shall be levied at the rates specified in the order published as aforesaid, unless and until the Commissioners at a meeting, held not less than fifteen days before the end of the year, make and publish an order specifying any different rates at which the tax shall be payable for the ensuing year.

Half-yearly
statement
of liability
and pay-
ment of
tax.

171. (1) In any municipality in which a tax has been imposed under section 168 the owner of every carriage, horse, and other animal mentioned in Schedule III shall, within the first month of each half-year, forward to the Commissioners a statement in writing, signed by him, containing a description of the carriages, horses and other animals liable to the tax, for which he is bound to take out a license.

¹The words "belonging to the Crown" were originally substituted for the words "belonging to Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "by the Central or any Provincial Government" were originally substituted for the words "by the Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 172—177.)

(2) Such owner shall, at the same time, pay to the Commissioners such sum as shall be payable by him for the current half-year for the carriages, horses and other animals specified in such statement, according to the rates specified in any order for the time being in force under section 168.

172. If any person acquires possession, at any time after the commencement of any half-year of any carriage, horse or other animal mentioned in Schedule III, in respect of which no license has been given for such half-year, he shall forward a statement as required under section 171 within one month of the date on which he may have acquired possession thereof and shall pay such amount of the tax as shall bear the same proportion to the whole tax for the half-year as the unexpired portion of the half-year bears to the half-year; and such amount shall be calculated from the date on which such person may have acquired possession as aforesaid.

Proportionate tax on carriages, etc., acquired during the half-year.

173. (1) On receiving the amount of the tax due the Commissioners, or some person authorised by them, in that behalf, shall give to the person paying the same a license for the several carriages, horses and other animals for the period in respect of which the amount is received.

Grant of license on payment of tax.

(2) Such licence shall be for the current half-year and no longer.

174. Whenever the owner of any carriage, horse or other animal who is liable to pay the said tax is not resident within the limits of the municipality to the Commissioners of which the tax is due, the person in whose immediate possession the carriage, horse or other animal is for the time being kept shall pay the tax and take out a license for the same.

Liability in absence of owner.

175. No person shall keep, or be in possession of any carriage, horse or other animal without the license required under this Act:

Carriages, etc., not to be kept without a license.

Provided that no carriage which has not been brought into use or which is so damaged as in the opinion of the Commissioners to be unfit for use shall be liable to the tax.

176. The Commissioners at their discretion may compound for any period not exceeding one year with livery stable-keepers and other persons keeping carriages, horses or other animals for hire for a certain sum to be paid for the carriages, horses or other animals so kept by such persons, in lieu of the tax at the rates specified in any order made by the Commissioners under sections 168 and 170.

Composition with livery stable-keepers.

177. The Commissioners shall, from time to time, cause to be prepared and entered in a book, to be kept by them and to be open to the inspection of any person interested therein, a list of the persons to whom during the then current half-year a license has been given, and of the carriages, horses and other animals in respect of which they have paid the tax.

Preparation of list of persons licensed.

(Part III.—Chapter V.—Municipal Taxation.—Secs. 178—182.)

Power to inspect stable, etc., and to summon persons liable to the payment of the tax.

178. (1) The Commissioners, or any person authorized by them in this behalf, may, at any time between sunrise and sunset enter and inspect any stable or coach house, or any place wherein they may have reason to believe that there is any carriage, horse or other animal liable to the tax, for which a license has not been taken out.

(2) The Commissioners may summon any person whom they have reason to believe to be liable to the payment of any such tax, or any servant of such person, and may examine such person or servant as to the number and description of the carriages, horses and other animals in respect of which such person is liable to be taxed.

Refund of tax in certain cases.

179. On proof being given to the satisfaction of the Commissioners that a carriage, horse or other animal for which a license has been taken out for any half-year has ceased to be kept or to be used within the municipality during the course of such half-year, the Commissioners shall order a refund of so much of the tax for the half-year as shall bear the same proportion to the whole tax for the half-year as the period during which such carriage, horse or other animal has not been kept or used in the municipality bears to the half-year; but no such refund shall be allowed unless notice be given to the Commissioners within one month of the time when such keeping or use of such carriage, horse or other animal ceased, and, except for special cause shown, the Commissioners shall pass no order for refund until after the close of the half-year in respect of which the refund is claimed.

Prohibition of double-tax.

180. Nothing in sections 168 to 179 shall be deemed to authorise the levy of more than one tax for the same period in respect of any carriage, horse or other animal which is used in the ordinary course of business in more than one municipality.

In such cases the tax shall be levied by the Commissioners of the municipality within the jurisdiction of which the carriage, horse or other animal is kept.

Meaning of "used in the ordinary course of business".

181. A carriage, horse or other animal shall be deemed to be used in the ordinary course of business within the meaning of section 168, if it is used on business on an average thrice a week.

The tax on professions, trades and callings.

Tax on professions, trades and callings.

182. When it has been determined that a tax shall be imposed on professions, trades and callings, every person who exercises in the municipality, either by himself or by an agent or representative, any of the professions, trades or callings, specified in Schedule IV, shall take out a half-yearly license and pay the tax imposed under clause (f) of sub-section (1) of section 123.

¹[*Explanation.*—Manufacture or storage of goods in a municipality for the purpose of carrying on business outside the municipality shall be deemed to be carrying on a trade or calling within the municipality.]

¹This *Explanation* was added by sec. 16 of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 183—186.)

The registration of carts.

183. (1) When it has been determined that a fee on registration of carts shall be imposed, the Commissioners at a meeting may make and publish an order that every cart, which is kept or is used in the ordinary course of business within the municipality, shall be registered by the Commissioners with the name and residence of the owner, and shall bear the number of registration in such manner as the said Commissioners shall direct :

Registration and numbering of carts.

Provided always that such order shall be published at least one month before the beginning of the half-year in which such order for registration shall be enforced.

(2) This section shall not apply to—

(a) carts which are the property of the ¹[Government] or of the Commissioners ;

(b) carts which are kept without the limits of the municipality, and are only temporarily and casually used within such limits ; and

(c) the municipality of Howrah.

(3) The registration of carts shall be made and the numbers assigned yearly or half-yearly on such days as the Commissioners shall notify.

184. The fee payable for each registration under section 183 for every cart shall be such sum not exceeding six rupees as the Commissioners at a meeting may fix from time to time, if the registration has effect for one year and shall be half of this sum if the registration has effect for half a year.

Fee for registration.

185. Notwithstanding anything contained in section 184, the Commissioners at a meeting may, with the sanction of the ²[State Government], increase by any amount not exceeding fifty *per cent.* the fee to be paid for registration of any cart any wheel of which has a rim or tyre of less than two inches in width.

Power to increase fees for carts with narrow tyres and rims

186. Any person becoming possessed of any cart which has not been registered for the then current period of registration shall register the same within one month from the date on which he has become possessed thereof, and the Commissioners shall grant registration in any such case on payment of such amount of the fee as bears the same proportion to the whole fee for the current period of registration as the unexpired portion of the current period of registration bears to the whole of such period ; and such fee shall be calculated from the date on which such person shall have become possessed as aforesaid.

Proportionate payment of fee.

¹The word "Crown" was originally substituted for the word, "Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²See foot-note 2 on page 297, *ante*.

(Part III.—Chapter V.—Municipal Taxation.—Secs. 187—189.)

Transfer
of
ownership.

187. When the ownership of any registered cart is transferred within any period of registration, it shall be registered anew within one month of the transfer in the name of the person to whom it has been transferred, and a fee not exceeding four annas shall be paid for every such re-registration.

Carts not
to be kept
without
being
registered
and with-
out
number.

188. No person shall keep, or be in possession of a cart not duly registered as required by this Act, nor shall any person, being the owner or driver of any cart, fail to affix thereto the registration number as required by this Act.

Seizure
and sale of
unregist-
tered
carts.

189. (1) If any person owns or keeps any cart without registering the same as required by this Act, the Commissioners, or any person authorized by them in this behalf may seize and detain such cart (provided the same be not employed at the time of seizure in the conveyance of any passengers or goods) together with the animals, if any, drawing the same, and all police-officers are required, on the application of the Commissioners, or of any person duly authorized by them in that behalf, to assist in the said seizure.

(2) After such seizure the Commissioners shall forthwith issue a notice in writing that after the expiration of ten days they will sell such cart and animals, if any, by auction at such place as they may state in the notice; and, if any registration fee, together with the cost arising from such seizure and custody, remains unpaid for ten days after the issue of such notice, the Commissioners may sell the property seized for payment of the said fee, and of all expenses occasioned by such non-payment, seizure, custody and sale.

(3) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction:

Provided that, if at any time before the sale is concluded, the person whose cart and animals, if any, have been seized tenders to the Commissioners, or to the person authorized by them to sell the property, the amount of all the expenses incurred and the registration fee payable by him, the Commissioners shall forthwith release the property so seized.

(4) Notwithstanding anything contained in this section the surplus of the sale proceeds of a cart and animals, if any, seized under this section, may be devoted to the payment of any fine imposed for a breach of the provisions of section 188; and any property which has been seized under this section may be sold for the realization of any such fine,

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 190—193.)

190. (1) Nothing in sections 183 to 189 shall be deemed to authorize the levy of more than one fee for the same period in respect of any cart which is used in the ordinary course of business in more than one municipality.

Carts used or registered in more than one municipality.

(2) When carts not kept within any municipality are so used in more than one municipality, the ¹[State Government] may, if it thinks fit, apportion between all such municipalities the registration fees paid under this Act in respect of such carts.

(3) When a cart is registered under this Act in more than one municipality, the Commissioners of the municipality within which the cart is kept shall have a right to levy the registration fee in preference to the Commissioners of any other municipality :

Provided that such right is claimed by notice to the other municipality or municipalities concerned within two months of the date on which the fee becomes due.

(4) Where any dispute arises between the Commissioners of any two or more municipalities regarding any claim made under sub-section (3) of this section the matter shall be referred to the decision of the ¹[State Government] and the decision of the ¹[State Government] shall be final.

191. A cart shall be deemed to be used in the ordinary course of business, within the meaning of sections 183 to 190, if it is used on business on an average twice a week.

Meaning of "used in the ordinary course of business".

Tolls on ferries.

192. The Commissioners may, with the sanction of the ¹[State Government], declare that any ferry not being vested in any other local authority within or adjacent to the limits of the municipality is a municipal ferry, and the profits derivable therefrom shall thenceforward be carried to the credit of the Municipal Fund :

Ferries may be declared to be municipal.

Provided that due compensation shall be made by the Commissioners to any person for the loss which he may have sustained in consequence of such ferry being declared to be a municipal ferry.

The amount of compensation due in such cases shall be ascertained and awarded by the magistrate under the provisions of section 17 of the Bengal Ferries Act, 1885, or any similar law for the time being in force.

Ben. Act I.
of 1885.

193. Every municipal ferry shall be maintained by the Commissioners, and they shall do all things necessary to provide for the safety and convenience of travellers, and the safety of property to be conveyed on such ferry.

Duties of Commissioners in regard to such ferries.

¹ See foot-note 2 on page 297, ante.

[Ben. Act XV**(Part III.—Chapter V.—Municipal Taxation.—Secs. 194—198.)**

Rate of
tolls to be
established
and pub-
lished.

194. When it has been determined to impose tolls on municipal ferries, the Commissioners at a meeting shall from time to time make and publish an order specifying the ferries and, with the sanction of the Commissioner of the Division, the rates at which such tolls shall be levied and shall cause a copy of such order to be permanently affixed on some conspicuous place at the ferry ghat.

When per-
sons cross-
ing river
not liable
to toll.

195. No person shall be liable to pay any toll for crossing any river or stream at or near a municipal ferry, if he crosses the river or stream in a boat or other appliance which is kept for the personal use of such person.

Cancell-
ation of
ferry lease,
etc.

196. Every lease of a ferry given by the Commissioners as hereinafter provided shall be liable to be cancelled at once, if it shall appear to the Commissioner at a meeting that the lessee has failed to make due provision for the convenience or safety of the public within fifteen days after being required to do so by a notice in writing from the Commissioners.

On the cancelment of a lease the Commissioners may take possession of all boats and other appliances which have been used by the lessee in the working of the ferry ; and may either retain the same permanently on payment of a fair price to the proprietor, or may retain them for such time as may be necessary, not exceeding three months, until they can make arrangements for such other boats and appliances as may be necessary, in which case the Commissioners shall pay a fair sum to the owners for the use of the said boats and appliances :

Provided that within a week of taking such possession, the Commissioners shall be bound to give notice to the said lessee of their intention to retain the said boats and appliances permanently, or for a period to be specified in the notice.

Toll must
be prepaid.

197. Any collector or lessee of tolls, or his agent, may refuse to convey any person or goods across a municipal ferry until the proper toll has been paid, and may require any person who refuses to pay the toll to leave the boat or appliance and to remove his goods from it.

Keeping of
unauthori-
sed ferry-
boat.

198. No person shall keep a ferry-boat whether or not plying for hire within a distance of two miles above or below any municipal ferry without the previous sanction—

- (i) of the Commissioners, if he plies within the limits of the municipality,
- (ii) of the Magistrate of the district, if he plies without such limits, or
- (iii) of the Magistrate of the district and the Commissioners, if one of the two banks between which he plies is within and the other bank is without, such limits.

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 198A—201.)

Ben. Act
III of 1884.

This section shall not apply to any private ferry which was in existence at the commencement of the Bengal Municipal Act, 1884.

¹198A. The Commissioners at a meeting with the sanction of the ²[State Government] may make rules in all matters connected with the purposes of section 193, and for other matters relating to the management and leasing out of ferries.

Power of
Commissioners to
make rules
as to
ferries.

Tolls on bridges.

199. The ²[State Government] may, with the consent of Commissioners at a meeting, make over to the Commissioners any existing toll-bar on a bridge within the limits of the municipality to be administered by them until the ¹[State Government] shall otherwise direct; every toll-bar, while so administered shall be deemed to be a municipal toll-bar, and the profits derivable therefrom, or such parts thereof as shall be agreed upon between the ²[State Government] and the Commissioners, shall be carried to the credit of the Municipal Fund.

Existing
toll-bars.

200. The Commissioners at a meeting, with the sanction of the ²[State Government], may establish a toll-bar and levy tolls on any bridge which they may have constructed after the commencement of the Bengal Municipal Act, 1884, or at any place within the municipality adjacent to such bridge at which tolls may conveniently, be levied on carriages, carts and animals passing over such bridge; and the profits derivable therefrom shall be carried to the credit of the Municipal Fund:

Commissioners
may establish
toll-bar.

Provided that no such toll-bar shall be established or tolls levied, otherwise than for the purpose of recovering the expenses incurred in constructing such bridge and in maintaining such bridge in repair for the five years next after the construction thereof, together with interest on such expenses as provided in section 201.

201. Whenever a toll-bar shall have been established, and tolls shall be levied, as provided in section 200, the Commissioners shall at the end of each year publish, by causing it to be posted up at their office, an abstract account showing—

Commissioners to
publish
expenses,
etc., of
toll-bars.

- (i) the amount of expenses incurred in the construction of such bridge and in the maintenance of the same;
- (ii) the amount of interest which has accrued due thereon, at the annual rate of six *per centum*; and
- (iii) the amount which has been received from the profits of the said toll-bar since its establishment;

and, as soon as such expenses and interests shall have been recovered as aforesaid, such toll-bar shall be removed and toll shall no longer be levied on such bridge.

¹Section 198A was inserted by sec. 32 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²See foot-note 2 on page 297, *ante*.

(Part III.—Chapter V.—Municipal Taxation.—Secs. 202—205.)

Rates of
tolls to be
established
and
published.

202. When it has been determined that tolls shall be levied on any such bridge, the Commissioners at a meeting shall from time to time make and publish an order, with the sanction of the Commissioner of the Division, specifying rates at which such tolls shall be levied.

Power of
collector or
lessee in
the case of
refusal to
pay toll.

203. Any collector or lessee of tolls may refuse to allow any person to pass through any municipal toll-bar until the proper toll has been paid.

Penalty for
refusing to
pay or
avoiding
payment
of toll.

204. No person taking through a toll-gate any motor vehicle, carriage, cart or animal (not exempted from toll) shall refuse to pay the toll, nor shall any person fraudulently avoid taking through a toll-gate any such motor vehicle, carriage, cart or animal with intent to evade payment of the toll.

In case of
non-pay-
ment of
toll,
vehicle,
etc., may
be seized
and sold.

205. (1) If the toll due on any motor vehicle, carriage, cart or animal is not paid on demand, the person authorised to collect the same may seize such motor vehicle, carriage, cart or animal, or any part of its load of sufficient value to defray the toll, and shall give immediate notice of such seizure to the Commissioners.

(2) After such seizure the Commissioners shall forthwith issue a notice in writing that, after the expiration of ten days, they will sell the property seized by auction at such place as they may state in the notice ; and if any toll, together with the cost arising from such seizure and custody, remain undischarged for ten days after the issue of such notice, the Commissioners may sell the property seized for discharge of the toll, and of all expenses occasioned by such non-payment, seizure, custody and sale.

(3) If the load or sufficient part thereof consists of articles which are subject to speedy and natural decay or consists of livestock, that load or part thereof may forthwith be sold under orders of the Commissioners.

(4) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction :

Provided that, if at any time before the sale has been concluded, the person whose property has been seized shall tender to the Commissioners, or to the officer appointed by them to sell the property, the amount of all the expenses incurred and of the toll payable, the Commissioners shall forthwith release the property seized.

(5) Notwithstanding anything contained in this section, the surplus of the sale-proceeds of any property seized under this section may be devoted to the payment of any fine imposed for contravention of section 204 ; and any property which has been seized under this section may be sold for the realisation of any such fine.

of 1932.]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 206—210.)

General provisions relating to tolls on ferries and bridges.

206. The Commissioners at a meeting may grant a lease—
- (a) of any municipal toll-bar for any period not exceeding three years, and
 - (b) of any municipal ferry for any period not exceeding three years or with the sanction of the ¹[State Government] for a longer period not exceeding nine years.

Lease of
ferry or
toll-bar.

207. The Commissioners shall cause a table of tolls legibly written in Bengali to be hung up by the toll collector or lessee of the municipal ferry or toll-bar.

Table of
tolls to be
hung up.

in some conspicuous position at each end of every municipal ferry, and

in some conspicuous position near every municipal toll-bar so as to be easily read by all persons required to pay the toll.

208. The Commissioners, or the lessee of any municipal ferry for toll-bar, may compound with any person for a certain sum to be paid by such person for himself, or for any vehicles or animals kept by him, in lieu of the ordinary toll payable.

Composi-
tion in
respect of
tolls.

209. (1) No tolls shall be paid for the passage of Government stores or the persons in charge of them ;

Exemp-
tions

or of police-officers, or of any public or municipal or district board officer on duty, or of any person in their custody or of any property belonging to them or in their custody, or of any carriage, cart or animal employed by such persons for the transport of such property ;

or of conservancy carts or other carriages, carts or animals belonging to the Commissioners or of the persons in charge of them :

Provided that tolls shall be leviable for conveying such animals over a ferry.

(2) The Commissioners or their lessees shall not be bound to allow any person or thing not specified in sub-section (1) to cross a ferry or to pass a toll-gate without payment of the proper toll :

Provided that the Commissioners at a meeting may from time to time exempt any class of persons or things not specified in sub-section (1) from payment of the said toll ; and in granting a lease of any ferry or toll-bar may stipulate that any municipal servants and property and any other person or things shall be allowed to pass without payment of the toll.

210. In all cases of resistance to the person authorised to collect tolls, police-officers shall assist, when required, and for the purpose shall have the same powers as they have in the exercise of their ordinary police duties.

Police-
officers
to assist.

¹ See foot-note 2 on page 297, ante.

[Ben. Act XV]

(Part III.—Chapter V.—Municipal Taxation.—Secs. 211—215.)

Prohibition
of taking
unauthor-
ized tolls.

211. No person who is authorized under this Act to collect tolls shall demand or take any higher tolls than the tolls authorized under this Act.

Cancellation
of
lease.

212. Any lessee of a municipal ferry or toll-bar who demands or takes any higher tolls than the tolls authorized under this Act shall, in addition to any other penalty to which he is liable, be also liable to have his lease cancelled.

Commis-
sioners
may be
appointed
to collect
tolls in a
navigable
channel.

213. If the ¹[State Government] has declared that the provisions of the canals Act, 1864, or any other similar law for the time being in force, are applicable to any navigable channel which passes through the limits of a municipality it may, with the consent of the Commissioners at a meeting, appoint the Commissioners to collect tolls, as provided in section 8 of the said Act, until the ¹[State Government] shall otherwise direct; and the profits derivable therefrom, or such part thereof as shall be agreed upon between the ¹[State Government] and the Commissioners, shall thereforward be carried to the credit of the Municipal Fund.

Ben. Act
V of 1864.

In such case the Commissioners shall exercise all powers vested by such Act in the Collector.

State
Govern-
ment
may order
Commis-
sioners
to cease
levying
tolls.

214. The ¹[State Government] may at any time order that the Commissioners, or any person authorized by them, shall cease to levy any tolls under section 213 and may at any time withdraw such order.

Rules.

Power
to make
rules as to
taxation.

215. The ¹[State Government] may make rules—

- (a) prescribing the qualifications of, and the procedure to be followed by, an assessor² * * *
- (b) prescribing the procedure to be followed by a committee appointed under sub-section (1) of section 149 to review an assessment or valuation;
- (c) prescribing the form of notices under section 147 of notices of demand under sub-section (2) of section 155, of warrants under sub-section (1) of section 157, and returns of sales under sub-section (3) of section 159;
- (d) fixing the fees payable in connection with distraint under this Act;
- (e) prescribing the conditions and limitations under which a water-rate or lighting rate may be imposed under the proviso to clause (a) of sub-section (1) of section 125;

¹See foot-note 2 on page 297, ante.

²The words "of municipal taxes" were omitted by sec. 88 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

of 1932.]

(Part III.—Chapter VI.—Streets.—Secs. 216, 217.)

- (f) prescribing the conditions and limitations under which a license may be granted for the purpose of a tax on the trades, professions, and callings specified in Schedule IV ; and
- (g) regulating any other matter relating to taxes, tolls, fees or rates in respect of which this Act makes no provision or insufficient provision, and for which provision is, in the opinion of the ¹[State Government], necessary, or which is directed to be prescribed.

CHAPTER VI.

Streets.

General.

216. The provisions contained in sections 217 to 220 and in sections 223 to 229 shall not apply to any municipality, unless and until they have been expressly extended thereto by a notification issued by the ¹[State Government] on application of the Commissioners at a meeting.

Certain provisions relating to streets to be applied only to certain municipalities.

Building-lines and street alignments for public streets.

217. (1) If the Commissioners at a meeting consider it expedient to prescribe for any public street a building-line or a street alignment, or both a building-line and a street alignment, they shall give public notice of their intention to do so :

Power to Commissioners to prescribe building-line and street alignment.

Provided that no building-line shall ordinarily be prescribed for any street laid out and made before the commencement of this Act.

(2) Every such notice shall specify a period within which objections will be received, and a copy of such notice shall be sent by post to every owner of premises abutting on such street who is registered in respect of such premises on the books of the municipality :

Provided that failure or omission to serve such notice on any owner shall invalidate proceedings under this section.

(3) The Commissioners shall consider all objections received within the said period and shall hear any objector who comes forward within such period as they may fix in this behalf, and may then make an order prescribing a building-line or a street alignment or both a building-line and a street alignment for such public street.

A register or book with plans attached shall be kept by Commissioners showing all public streets in respect of which a building-line or street alignment has been prescribed, and such

¹See foot-note 2 on page 297, *ante*.

[Ben. Act XV]

(Part III.—Chapter VI.—Streets.—Sec. 218.)

register shall contain such particulars as to the Commissioners may appear to be necessary and shall be open to inspection by any person upon payment of such fee as may from time to time be fixed by the Commissioners at a meeting.

(4) A building-line shall not be prescribed so as to extend further back than the main front wall of any building (other than a boundary wall) abutting on the street at its widest part.

(5) Every order made under sub-section (3) shall be published in the ¹[*Official Gazette*], and shall take effect from the date of such publication.

Restri-
tions on
erection of,
or addition
to,
buildings
or walls
within
street
alignment
or
building-
line.

218. (1) No portion of any building or boundary wall shall be erected or added to within a street alignment prescribed under section 217 :

Provided that the Commissioners at a meeting may, in their discretion, permit additions to a building to be made within a street alignment, if such additions merely add to the height of, and rest upon, an existing building or wall, upon the owner of the building executing, if required to do so by the Commissioners, an agreement binding himself and his successors in interest—

(a) not to claim compensation in the event of the Commissioners at any time thereafter calling upon him or such successors, by written notice to remove any addition made to any building in pursuance of such permission, or any portion thereof, and

(b) to pay the expenses of such removal.

(2) If the Commissioners refuse to grant the permission applied for to add to any building on the ground that the proposed site falls wholly or in part within a street alignment prescribed under section 217 and if such site, or the portion thereof which falls within such alignment, be not acquired by the Commissioners within six months after the date of such refusal, they shall pay reasonable compensation to the owner of the site.

(3) No person shall erect or add to any building between a street alignment and the building-line without first obtaining the permission of the Commissioners at a meeting to do so :

Provided that it shall not be necessary to obtain permission under this sub-section to erect, between a street alignment and the building-line,—

(a) a porch or balcony, or,

(b) along not more than one-third of the frontage, an out-house not exceeding fifteen feet in height.

(4) If the Commissioners grant permission under sub-section (3), they may require the applicant to execute an agreement in accordance with the proviso to sub-section (1).

¹ See foot-note 2 on page 301, *ante*.

of 1932.]

(Part III.—Chapter VI.—Streets.—Secs. 219—221.)

219. (1) The Commissioner may at any time after notice to the owner of the land of their intention take possession of—

- (a) any land (abutting on a public street) upon which any portion of any building or wall, projecting beyond the front of the adjoining building or wall, which is on either side of such first-mentioned building or wall, has collapsed or been demolished or burnt down, and
- (b) any land not covered by buildings (including land on which a building has collapsed or been demolished or burnt down) which is situated within a street alignment prescribed under section 217,

after making full compensation to the owner thereof for any direct damage which he may sustain thereby and shall take possession of any land, as specified in clause (b), if the owner thereof calls upon them to do so.

(2) Any land taken possession of under sub-section (1) shall forthwith be added to and become part of the said street, and shall vest in the Commissioners.

Explanation.—The expression “direct damage” as used in sub-section (1) with reference to land, means the market value of the land taken and the depreciation, if any, in the ordinary market value of the rest of the land resulting from the area being reduced in size ; but does not include damage due to any particular use to which the owner may allege that he intended to put the land, although such use may be injuriously affected by the reduction of the site.

220. The Commissioners at a meeting may, upon such terms as they think fit, allow any building or wall to be set forward for the purpose of improving the line of a public street.

Opening, improvement and closing of public streets, squares and gardens.

221. The Commissioners in pursuance of a decision arrived at a meeting may—

- (a) lay out and make new streets, squares and gardens ;
- (b) construct new bridges, causeways, culverts and subways ;
- (c) turn, divert, or temporarily or permanently close any public street or part thereof, or permanently close any public square or garden ;
- (d) widen, open, enlarge, or otherwise improve any public street, square or garden ;

Power to Commissioners to take possession of, and add to street, land situated within prescribed street alignment or covered by projecting buildings.

Power to Commissioners to set buildings forward to improve line of public street.

Power to Commissioners to make, improve and close public streets, squares and gardens.

(Part III.—Chapter VI.—Streets.—Secs. 222, 223.)

- (e) provide at their discretion building sites of such dimensions as they think fit to abut on, adjoin or obtain access from any public street made, widened, lengthened, extended, enlarged or improved by the Commissioners under clauses (a), (b), (c) or (d) or by the ¹[State Government] ;
- (f) subject to the provisions of any rule made by the ¹[State Government], prescribing the conditions on which the land may be acquired for the Commissioners, obtain, through the ¹[State Government] the acquisition of any land, along with the buildings thereon, which they consider necessary for the purposes of any scheme or work undertaken or projected in exercise of the powers conferred by the preceding clauses including purposes of recoupment of the cost of any such scheme or work ; and
- (g) subject to the provisions of any rule made by the ¹[State Government], prescribing the conditions on which land vested in the Commissioners may be transferred, lease, sell or otherwise dispose of any land acquired, for the Commissioners under clause (f) or any buildings erected thereon or any land used by the Commissioners for a public street, and in doing so impose any condition as to the description of any building to be erected thereon, as to the period within which such building shall be completed, as to the removal of any building existing thereon and as to any other matter that they deem fit.

Power to Commissioners to dispose of so much of a permanently closed street, square or garden as is not required.

222. (1) When any public street, or part thereof or any public square or garden, is permanently closed under section 221, the Commissioners, in pursuance of a decision arrived at at a meeting, may sell or lease the site of so much of the roadway and foot-path as is no longer required, or the site of the square or garden, as the case may be, making due compensation to, or providing means of access for, any person who may suffer damage by such closing.

(2) In determining such compensation allowance shall be made for any benefit accruing to the same premises or any adjacent premises belonging to the same owner from the construction or improvement of any other public street, square or garden at or about the same time that the public street, square or garden on account of which the compensation is paid is closed.

Projected public streets.

Projected public streets.

223. (1) The Commissioners at a meeting may from time to time prepare schemes and plans of projected public street, showing the direction of such street, the street alignment and building-line on each side of them, their intended width and such other details as may appear desirable.

¹ See foot-note 2 on page 297, ante.

of 1932.]

(Part III.—Chapter VI.—Streets.—Secs. 224, 225.)

(2) The width of such projected streets, inclusive of space for foot-paths, shall not be less than twenty feet :

Provided that—

(a) the Commissioners at a meeting may for special reasons reduce the width of any projected street but not so as to be less than sixteen feet ; and

(b) the sub-section shall not apply in any case in which the projected street, or any part thereof, runs along an existing street and the Commissioners consider it impracticable to widen the street to the extent of twenty feet.

224. The provisions of section 218 shall, with all necessary modifications, apply to public streets projected under section 223.

Provisions of section 218 to apply to projected public streets.

Special provisions as to private streets.

225. (1) Any person intending to make or lay out a new private street shall send to the Commissioners a written notice, with plans and sections, showing the following particulars of the proposed street, namely—

Making of new private streets.

(a) the level, width and alignment thereof, and

(b) the arrangements to be made for levelling, paving, metal-ling, flagging, channelling, sewerage, draining and lighting the street.

(2) The provisions of this Act as to the width of public streets and the height of buildings abutting thereon, and as to projected public streets, shall respectively apply in the case of streets referred to in sub-section (1) ; and all the particulars referred to in that sub-section shall be subject to approval by the Commissioners at a meeting :

Provided that the Commissioners at a meeting may allow a private street to be made or laid out of a width less than twenty feet but not less than sixteen feet.

(3) Within ninety days after the receipt of any notice under sub-section (1) the Commissioners at a meeting shall either sanction the making of the street, or disallow it, or ask for further information with respect to such street.

(4) Such sanction may be refused—

(i) if the proposed street would conflict with any arrangements which have been made, or which are in the opinion of the Commissioners likely to be made within a reasonable period, for carrying out any general scheme of street improvement, or

(ii) if the proposed street does not conform to the provisions of this Act referred to in sub-section (2), or

(iii) if the proposed street is not designed so as to connect at one end with a street which is already open.

(Part III.—Chapter VI.—Streets.—Secs. 226—228.)

(5) If further information is asked for under sub-section (3), no steps shall be taken to make or lay out the street until orders have been passed upon receipt of such information, and such orders shall be passed within ninety days of the receipt of such further information.

(6) If within ninety days after the receipt of any notice under sub-section (1), or within ninety days after the receipt of any further information asked for under sub-section (3), the Commissioners have not refused sanction to the making of the private street, it shall be deemed that sanction to the same has been granted.

Prohibition of breach of section 225.

226. Except as provided in sub-section (6) of section 225, no person shall make or lay out any street referred to in sub-section (1) of section 225—

(a) until he has obtained the sanction of the Commissioners under that section, or

(b) in contravention of any orders made thereunder.

Alteration or demolition of street made in breach of section 225.

227. (1) If any person makes or lays out any street referred to in sub-section (1) of section 225, without having obtained the sanction of the Commissioners under that section, or in contravention of any orders made thereunder, the Commissioners may whether or not the offenders be prosecuted under this Act, by written notice,—

(a) require the offender to show sufficient cause, by a written statement signed by him and sent to the Commissioners on or before such day as may be specified in the notice, why such street should not be altered to conform to the provisions of the rules made under sub-section (1) of section 228 or, if such alteration be impracticable, why such street should not be demolished, or

(b) require the offender to appear before them, either personally or by a duly authorised agent, on such day and at such time and place as may be specified in the notice, and show cause as aforesaid.

(2) If any person on whom such notice is served fails to show sufficient cause, to the satisfaction of the Commissioners, why such street should not be so altered or demolished, they may cause the street to be so altered or demolished, and the expenses thereof shall be paid by such person.

228. (1) If any private street or any part thereof be not levelled, paved, metalled, flagged, channelled, sewered, drained or lighted in accordance with the rules to be made by the Commissioners at a meeting for this purpose, they may, by written notice to the owner of such private street or the respective owners of the land fronting, adjoining or abutting upon such street or part, as the case may be, from time to time require them to level, pave, metal, flag, channel, sewer, drain or light such street or part in accordance with the provisions of such rules.

(2) If such notice be not complied with and the Commissioners, undersub-section (2) of section 514, execute the works mentioned

of 1932.]

(Part III.—Chapter VI.—Streets.—Secs. 229—231.)

or referred to therein, the expenses thereby incurred shall be paid by the owner of such private street or the owners in default, in such proportion as may be settled by the Commissioners at a meeting.

229. If any private street which conforms to the provisions of this Act referred to in sub-section (2) of section 225 be levelled, paved, metalled, flagged, channelled, sewered, drained and lighted in accordance with the provisions of the rules made under sub-section (1) of section 228, and if a majority of—

Power to Commissioners to take over private streets.

- (a) the owners of land or buildings in such street, or
- (b) the owners of the street, or
- (c) the owners who have paid the expenses referred to in sub-section (2) of section 228,

signify in writing their consent thereto, the Commissioners at a meeting shall declare the same, by written notice put up in any part of such street, to be a public street, and thereupon the same shall become a public street and shall vest in the Commissioners :

Provided that, where a private street has been in existence for not less than thirty years and if used by the people of the locality as a thoroughfare, the Commissioners at a meeting may declare such street to be a public street, even though it does not strictly comply with the provisions of this chapter, if—

- (a) the owners of the lands and buildings in such street, or
- (b) the owners of the street,

signify in writing their consent thereto.

Supplemental provisions for regulating and protecting streets.

230. (1) The Commissioners shall, during the construction or repair of a public street or of any waterworks, drain or premises vested in them, or whenever any public street, waterworks, drain or premises vested in them have, for want of repairs or otherwise, become unsafe for use by the public, take all necessary precautions against accident by—

Duties of Commissioners when constructing public streets, etc.

- (a) shoring up and protecting adjacent buildings, and
- (b) fixing bars, chains, posts or other barriers across or in any street for the purpose of preventing or diverting traffic during such construction or repair, and
- (c) guarding and providing with sufficient lighting from sunset to sunrise any work in progress.

(2) No person shall, without the authority or consent of the Commissioners, in any way interfere with any arrangement or construction made by the Commissioners under sub-section (1) guarding against accident.

231. (1) Every person intending to build or take down any house, or to alter or repair the outward part of any house, shall, if any public street will be obstructed or rendered inconvenient or dangerous by means of such work, before beginning the same

Hoardings to be set up during repairs.

[Ben. Act XV]

(Part III.—Chapter VI.—Streets.—Secs. 232—234.)

causes hoardings or fences to be put up to the satisfaction of the Commissioners in order to separate the house where such works are being carried on from the street, and shall keep such hoardings or fences standing and in good condition, to the satisfaction of the Commissioners during such time as the public safety or convenience requires, and shall cause the same to be sufficiently lighted during the night :

Provided that, no person shall put up a hoarding or fence without the written permission of the Commissioners, nor shall he keep up the said hoarding or fence for a time longer than allowed in the said written permission.

(2) Any person who contravenes the provisions of sub-section (1) or who, without written permission, erects or sets up any hoarding, scaffolding or fence whatsoever, or who, being permitted, fails to put up such hoarding, scaffolding or fence or to continue the same standing, or to maintain the same in good condition, or who does not, while such hoarding or fence is standing, keep the same sufficiently lighted during the night, or who does not remove the same within eight days when directed by the Commissioners, shall be liable to fine as provided in this Act.

Leave to deposit materials temporarily on, or to excavate or close, a street.

232. The Commissioners may grant permission to any person, for such period and on such conditions as they may think fit, to deposit any movable property on any public street, or to make an excavation in any public street, or to enclose the whole or any part of any street, and may charge such fees as they may fix for such permission :

Provided that such person shall make due provision for the passage of the public and shall erect sufficient fences to protect the public from injury, danger or annoyance, and shall light such fences from sunset to sunrise sufficiently for such purpose.

Power to close a street or part of a street for repairs or other public purpose.

233. The Commissioners may close temporarily any public street or part thereof for the purpose of repairing such street, or for the purpose of constructing any sewer, drain, culvert or bridge, or for any other public purpose :

Provided that the Commissioners so closing any street shall be bound to provide reasonable means of access for persons occupying holdings adjacent to such street.

Power to close a street or part of a street to cart or motor traffic.

234. The Commissioners at a meeting may make an order closing any public street or part thereof to cart or motor traffic :

Provided that no such order shall remain in force for more than six months without the sanction of the ¹[State Government].

¹See foot-note no 2 page 297, ante.

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(Part III.—Chapter VI.—Streets.—Secs. 235—237.)

235. (1) No person shall put up any verandah, balcony, sunshade, weather-frame or the like to project over any public street without the written permission of the Commissioners.

Sanction of Commissioners to projection over streets and drains.

(2) Subject to any rules made by the ¹[State Government] prescribing the conditions for the sanction by the Commissioners of projections over public streets or drains, the Commissioners at a meeting may, in their discretion, give written permission on such condition as they may think fit, and, on payment of such fees or rent as they may from time to time fix, to the owners or occupiers of buildings abutting on public streets to erect or re-erect verandahs, balconies, sunshades, weather-frames and the like, whether supported by pillars or not, to project from any building over a street or a drain in a street from any upper story thereof, at such height from the surface of the street and to such an extent beyond the line of the plinth or basement wall as are specified in by-laws to be framed under section 245.

(3) In giving permission under sub-section (2), the Commissioners may prescribe the extent to which, and the conditions under which, any roofs, caves, weather-boards, and the like may be allowed to project over such streets.

(4) At any time after any permission has been given under sub-section (2), the Commissioners at a meeting may, by written notice, require the owner or occupier of the building to remove the projection referred to in such permission and the owner or occupier shall be entitled to reasonable compensation out of the Municipal Fund for such removal.

236. (1) No platform shall be erected, re-erected or extended upon or over any public street or drain without the previous sanction of the Commissioners at a meeting.

Erection of platforms.

(2) The owner of every platform, except platforms which are used for giving such access to the houses as the Commissioners may consider necessary, shall, if the Commissioners at a meeting so direct, take out a licensee for keeping the platform.

(3) Every such license shall remain in force until rescinded by the Commissioners at a meeting.

(4) For every such license there shall be paid annually a fee to be fixed by the Commissioners at a meeting :

Provided that a platform erected, re-erected or extended upon or over any public street or drain before the commencement of this Act with the permission of the Commissioners at a meeting shall be allowed to remain on the same terms and conditions including the payment of any rent or fee prescribed in the permission.

237. Whenever any building, wall, revetment or other erection or any part thereof, or any tree, stone, soil or debris from private premises falls down or is caused to fall down and obstructs or encumbers any public street or drain, the Commissioners may remove such obstruction or encumbrance at the expense of the owner of the same, or may require him to remove the same within such time as to the Commissioners may seem fit.

Removal of fallen house, etc., obstructing street or drain.

¹ See foot-note 2 on page 297, ante.

(Part III.—Chapter VI.—Streets.—Secs. 238—240.)

Prohibition of cutting street.

238. (1) No person shall, without the consent of the Commissioners, dig or cut up a public street in order to provide for the passage of water or for any other purpose.

(2) Whoever contravenes the provisions of this section shall, in addition to any other penalty imposed under this Act, be bound to pay the expenses incurred in filling up any excavation made by him or on his behalf in any such public street.

Regulation of troughs and rain-water

flowing a street.

239. The Commissioners may, by notice, require the owner or occupier of any building or land abutting on a street to put up and keep in good condition proper troughs and pipes for receiving and carrying off the water from the building or land, and for discharging the same in such manner as the Commissioners may think fit, so as not to inconvenience persons passing along the street.

Removal of encroachments over house-gullies, etc.

240. (1) The Commissioners—

- (a) may, without notice themselves or by any officer authorised by them in writing in this behalf remove, alter or otherwise deal with any wall, hoarding, scaffolding, fence, rail, post, platform or other projection, obstruction or encroachment (not being a portion of a building or fixture referred to in section 241) which has, without first obtaining their written permission been erected or set up in, over, above or upon any house-gully, or any public street, sewer, drain, aqueduct, water-course or *ghat* ;
- (b) may issue a notice requiring any person to remove any wall, hoarding, scaffolding, fence, rail, post, platform or other projection, obstruction, or encroachment (not being a portion of a building or a fixture referred to in section 241) which he may have erected or set up in, over, above, or upon any house-gully, or any public street, sewer, drain, aqueduct, water-course or *ghat*, and which remains so erected or set up when the period covered by any permission given in its behalf has expired ; and
- (c) may, themselves or by any officer authorised by them in writing in this behalf, remove without notice any materials or goods or any movable property, which has, without their permission, been deposited in a public street, or in, over, above, or upon any house-gully, or any public sewer, drain, aqueduct, water-course or *ghat*, or which remains so deposited, when the period covered by any permission given in this behalf has expired, whether or not the offender be prosecuted under this Act or any rules or by-laws made thereunder, and the offender shall be liable to pay the expense of such removal.

(2) If the person who erected or set up any of the projections, obstructions or encroachments referred to in clause (b) of subsection (1) is not known or cannot be found, the Commissioners may cause a notice to be posted up in the neighbourhood of the said projection, obstruction or encroachment, requiring any person

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(Part III.—Chapter VI.—Streets.—Sec. 241.)

interested in the same to remove it, and it shall not be necessary to name any person in such requisition.

(3) Notwithstanding any prosecution which may be instituted, if the person on whom a notice has been issued under clause (b) of sub-section (1) fails to comply with the requisition within the period specified in the notice,

or if where a notice has been posted up under sub-section (2) the projection, obstruction or encroachment is not removed within the period specified in such notice,

the Magistrate may, on the application of the Commissioners' order that the projection, obstruction or encroachment be removed and thereupon the Commissioners may, notwithstanding anything contained in sections 514 to 518, remove such projection, obstruction or encroachment,

and the expenses thereby incurred shall be recovered from the person who erected or set up the same or by the sale of the materials removed.

(4) No person shall be entitled to compensation in respect of the removal of any projection, obstruction or encroachment under this section.

241. (1) When any verandah, platform or other similar structure or any fixture attached to a building so as to form part of the building, whether erected before or after the commencement of this Act, causes a projection, encroachment or obstruction over or on any house-gully or public street or any land vested in the Commissioners they may, by written notice, require the owner or occupier of the building to remove or alter such structure or fixture.

Power to Commissioners to remove or alter, verandah, etc., or fixtures attached to building which project, etc., over public street or land.

(2) If the expense of removing or altering any such structure or fixture is paid by the occupier of the building in any case in which the same was not erected by himself, he shall be entitled to deduct any reasonable expense incurred for the purposes of such removal or alteration from the rent payable by him to the owner of the building.

(3) If the person on whom a notice is issued under sub-section (1) fails to comply with the requisition within the period specified therein, the Magistrate may, on the application of the Commissioners, order that such structure or fixture be removed or altered, and thereupon the Commissioners may carry into effect the order of the Magistrate, and recover from the owner or occupier of the building the cost thereby incurred :

Provided that if the owner or occupier proves that any such structure or fixture was erected before the District Municipal Improvement Act, 1864, or the District Towns Act, 1868, or the Bengal Municipal Act, 1876, as the case may be, took effect in the municipality or in the case of a municipality constituted under the Bengal Municipal Act, 1884, in which none of the aforesaid Acts was in force prior to the commencement of that Act, before the date of the constitution of that municipality, or, in the case of a municipality constituted after the commencement of this Act, before the date of the constitution of that

Ben. Act
IV of
1864.
Ben. Act
VI of
1868.
Ben. Act
V of 1876.
Ben. Act
III of
1884.

[Ben. Act XV]

(Part III.—Chapter VI.—Streets.—Secs. 242—245.)

municipality, the Magistrate shall order reasonable compensation to be paid to any person who suffers damage by the removal or alteration thereof.

In determining the amount of compensation, the value of the land shall not be taken into consideration.

Commissioners may require landholders to trim hedges, etc.

242. The Commissioners may require the owner or occupier of any land within three days to trim or prune the hedges thereon bordering on any public street or drain and to cut and trim any trees thereon overhanging any public street or drain or tank or any well used for drinking purposes, or obstructing any public street or drain or any property of the Commissioners, or likely to cause damage to any person using any public street or fouling or likely to foul the water of any well or tank.

Commissioners may require owners of land to repair damage to streets, etc.

243. Whenever any public street or drain or any other municipal property is damaged, washed away or eroded by any private pool, ditch, tank, pond, pit or other excavation which exists by the side of such street, drain or property, the Commissioners may, by written notice, require the owner or occupier of the land on which such pool, ditch, tank, pond, pit or excavation is situated to repair the damage and to restore the street, drain or property to its original condition as far as possible within one month from the date of the service of such notice.

Names of streets and numbers of houses.

244. (1) The Commissioners at a meeting may cause a name to be given to any public street or square and to be affixed in such place as they may think fit, and may also cause a number to be affixed to every house ; and in like manner may, from time to time, cause such names and numbers to be altered.

(2) No person shall destroy, pull down, deface or alter any name or number put up by the Commissioners under the authority of sub-section (1).

Power to make by-laws.

245. The Commissioners at a meeting may make by-laws—

- (a) to regulate or prohibit any description of traffic on public street, or on approaches to *ghats* or public ferries and to prevent obstructions, encroachments, or excavations on or near such streets, *ghats* or ferries ;
- (b) to prevent, prohibit or regulate the use or occupation of any or all public streets or places by any person for the sale of articles or for the exercise of any calling or for setting up any booth or stall, and to provide for the levy of fees for such use or occupation ;
- (c) to determine the information and plans to be furnished to the Commissioners under section 225 ; and
- (d) to regulate the conditions on which permission may be given under section 235 with reference to projections over public streets and drains and to provide for the payment of fees or rent for such user of the streets and drains and to provide for the removal of such projections.

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(Part III.—Chapter VII.—Conservancy and Drainage.—
Secs. 246—249.)

CHAPTER VII.

Conservancy and Drainage.

Removal of sewage, rubbish and offensive matter.

246. The Commissioners at a meeting shall provide for the removal—

- (a) of sewage, rubbish and offensive matter from all public latrines, urinals and drains, and from all public streets and all other property vested in the Commissioners, and
- (b) in any municipality wherein a conservancy-rate has been imposed under section 123, of sewage and offensive matter from all private latrines, urinals and cess-pools,

Duties of Commissioners in relation to conservancy.

and for the disposal of ¹[and, if so required by the State Government, the preparation of compost manure from] such sewage, rubbish or offensive matter and for the cleaning of such latrines, urinals, drains and cess-pools, and shall maintain sufficient establishment, animals, carts, sewers, pumps, drains, outfall and disposal works and implements for the said purposes.

247. (1) The Commissioners at a meeting may make an order requiring all persons employed in the removal of sewage within the limits of the municipality, or any part thereof, to take out licenses, and to be servants of the Commissioners for the purpose of removing sewage from premises within the said limits.

Control over night men.

The Commissioners at a meeting may grant such licenses subject to such conditions as they may think fit, and may impose fees in respect of the same.

(2) Subject to the approval of the ²[State Government] the Commissioners at a meeting may make rules to define the duties of such persons, and any breach of such rules shall subject the offender to a forfeiture of license and to a fine as provided in such rules.

248. The Commissioners at a meeting may from time to time publish an order prescribing the hours within which and the manner in which sewage, rubbish and offensive matter may be removed.

Power to prescribe times and manner of removal of sewage, etc.

249. All servants of the Commissioners employed for the purposes of this chapter may, within such hours as may be fixed from time to time by the Commissioners at a meeting, enter on any premises of which the occupier or owner is liable to pay a conservancy-rate, and do all things necessary for the performance of their duties under this chapter.

Power of conservancy establishment.

¹These words were inserted by sec. 89 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²See foot-note 2 on page 297, *ante*.

(Part III.—Chapter VII.—Conservancy and Drainage.—
Secs. 250—252.)

Deposit and
removal of
sewage,
etc., in
certain
municipalities.

250. In any municipality ¹[or part thereof] wherein a conservancy-rate has not been imposed, the Commissioners at a meeting may provide places convenient for the deposit of sewage, rubbish and offensive matter and may require the occupiers of houses to cause the same to be deposited daily or at other stated intervals in such places, and may remove the same at the expense of the occupier from any house, if the occupier thereof fails to do so as required by this section.

Appointed
hours for
placing
rubbish,
etc., on
public
street.

251. (1) The Commissioners at a meeting may from time to time publish an order prescribing the hours within which only an occupier of any house or land may place rubbish or offensive matter on the public street adjacent to his house or land in a proper receptacle provided by the Commissioners in order that such rubbish or offensive matter may be removed by the servants of the Commissioners.

(2) No person shall place or ²[cause to be placed] rubbish or offensive matter on a public street at other than the times appointed and except in the receptacles provided by the Commissioners under sub-section (1).

Removal,
of rubbish,
etc., from
premises.

252. (1) The Commissioners at a meeting may contract with the occupier of any premises to remove rubbish or offensive matter direct therefrom and may charge fees in this behalf.

(2) When building operations are being carried on in any premises or when any premises are used for carrying on any manufacture, trade or business, the Commissioners may,—

- (a) by written notice, direct the occupier of such premises to collect all rubbish and offensive matter accumulating on such premises in the course of such operations, manufacture, trade or business and to remove the same, at such times, in such carts or receptacles, and by such routes as may be specified in the notice to a place provided or appointed in this behalf by the Commissioners, or
- (b) after giving such occupier written notice of their intention so to do, themselves cause all such rubbish and offensive matter to be removed, and charge such occupier for such removal such periodical fee as they may specify in such notice :

Provided that the requisition under clause (a) shall not be enforced by the Commissioners nor shall action be taken by them under clause (b) until the occupier of the premises has been given an opportunity of being heard within such time as may be specified in the written notice that is served on him.

¹These words were inserted by sec. 84 of the Bengal Municipal (Amendment) Act, 1986 (Ben. Act XI of 1986).

²These words were substituted for the words "allow his servant to place" by sec. 40 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

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(Part III.—Chapter VII.—Conservancy and Drainage.—
Secs. 253—255.)

253. No person who, being the occupier of a house in or near a public street, shall keep or allow to be kept, for more than twenty-four hours, or for more than such shorter time as may be fixed by the Commissioners at a meeting, otherwise than in some proper receptacle, any dirt, dung, bones, ashes, nightsoil or filth or any noxious or offensive matter in or upon such house, or in any out-house, yard or ground attached to and occupied with such house, nor shall any person suffer such receptacle to be in a filthy or noxious state, or neglect to employ proper means to cleanse the same.

Removal
of
offensive
matter
from or
near
street.

254. No person shall—

- (i) throw or put or cause or permit to be thrown or put, any sewage or offensive matter upon any street, or drop, pass or place, or cause to be dropped, passed or placed, into or in any drain, any brick, stones, earth or ashes or any substance or matter, by which or by reason of the amount of which such drain is likely to be obstructed ; or
- (ii) without the permission of the Commissioners pass, or permit or cause to be passed, into any drain provided for a particular purpose any matter or liquid for the conveyance of which such drain was not provided ; or
- (iii) without the permission of the Commissioners cause or suffer to be discharged into any drain from any factory, bakehouse, distillery, workshop or work place, or from any building or place in which steam, water or mechanical power is employed, any hot water, stream or fumes, or any liquid which would prejudicially affect the drain or the disposal by sale or otherwise of the sewage conveyed along the drain, or which would, from its temperature or otherwise, be likely to create a nuisance.

Prohibition
of
allowing
sewage,
offensive
matter or
rubbish
to be
thrown
or run
into street,
or drain
thereof.

255. (1) Whenever an animal in the charge of a person dies, otherwise than by being slaughtered either for sale or consumption or for some religious purpose, the person in charge thereof shall, either—

Disposal
of dead
bodies of
animals.

- (a) convey the carcass within twenty-four hours to a place (if any) fixed by the Commissioners for the disposal of the dead bodies of animals, or to a place beyond municipal limits not being within one mile of those limits, or
- (b) give notice of the death within six hours to the Commissioners whereupon the Commissioners shall cause the carcass to be disposed of.

(2) For the disposal of the carcass under clause (b) of subsection (1), the Commissioners may charge such fee as they may determine at a meeting and may recover the same, if not paid in advance, from the owner or person in charge of the animal.

[Ben. Act XV

(Part III.—Chapter VII.—Conservancy and Drainage.—
Secs. 256—258.)

Rubbish deposited to be the property of the Commissioners.

256. All things deposited in places provided or appointed under this chapter for the deposit of sewage, offensive matter, rubbish and carcasses of animals shall be the property of the Commissioners.

Public latrines.

257. The Commissioners in pursuance of a decision arrived at at a meeting shall provide and maintain in sufficient numbers and in proper situations public latrines and urinals for the separate use of each sex, and shall cause the same to be kept in proper order and to be properly cleansed.

Power to Commissioners to require privy and other accommodation to be provided in buildings.

258. (1) When application is made to erect or materially alter any building—

(i) intended for human habitation, or

(ii) at or in which labourers or workmen are to be employed, the Commissioners may direct that such privy and urinal accommodation shall be provided as they consider to be suitable therefor.

(2) In directing the provision of any such accommodation the Commissioners may determine in each case—

(a) where an underground sewerage system has been provided, whether such building shall be provided with service or connected privies or urinals, or partly with one and partly with the other ; and

(b) what shall be the site or position of each privy or urinal, and their number.

(3) When any premises at or in which not less than twenty labourers or workmen are employed are without privy, urinal, bathing or washing place accommodation to the satisfaction of the Commissioners they may, by written notice, require the owner of such premises to provide such privy, urinal or bathing place accommodation as they may prescribe.

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In sub-section (4) of section 258, omit the words "in the case of a building the valuation of which exceeds or is likely to exceed a sum to be fixed in this behalf by the Commissioners at a meeting."

(Omitted by West Ben. Act VII of 1969, section 7.)

[No. 6, dated the 1st May, 1970.]

this section for a requisition in the case of a building is likely to require the Commissioners to provide such accommodation as they may prescribe.

¹Sub-section (4) was added by sec. 41 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

of 1932.]

(Part III.—Chapter VII.—Conservancy and Drainage.—
Secs. 259, 260).

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259. (1) When any premises intended for human habitation are without privy or urinal accommodation, or if the Commissioners are of opinion that the existing privy or urinal accommodation available for the persons occupying or employed in any premises is insufficient, inefficient, or on any grounds objectionable, the Commissioners may, by written notice, require the owner of such premises—

Power to Commissioners to require such provisions to be made in other cases.

In sub-section (2) of section 259, omit the words "in the case of a building the valuation of which exceeds a sum to be fixed in this behalf by the Commissioners at a meeting,"

(Omitted by West Ben. Act VII of 1969, section 8.)

[No. 6, dated the 1st May, 1970.]
ommodation for any service-privy or service-urinal accommodation :

Provided that where the privy or urinal accommodation of any premises—

- (i) has been, and is being, used in common by the persons occupying or employed in such premises and any other premises, or
- (ii) is, in the opinion of the Commissioners, likely to be so used, the Commissioners may, if they are of opinion that such accommodation is sufficient to admit of the same being used by all the persons occupying or employed in all the said premises, direct in writing that separate privy or urinal accommodation need not be provided on or for such other premises :

Provided also that the Commissioners may, if they are of opinion that there is sufficient public latrine accommodation available for all the persons occupying or employed in any premises, direct that separate privy or urinal accommodation need not be provided for such premises.

(2) Any requisition under sub-section (1) may comprise any detail specified in sub-section (2) of section 258 ¹[and may, *inter alia*, include, in the case of a building the valuation of which exceeds a sum to be fixed in this behalf by the Commissioners at a meeting, a direction that septic tank latrines shall be provided or existing service latrines shall be replaced by septic tank latrines within a specified time].

260. When by-laws have been framed under section 269 or section 277 no person shall construct, renew, rebuild, remove, obstruct, destroy ; or change any house-drain, cess-pool, privy, sink, or urinal or appurtenances thereof, in contravention of any such, by-law or of any notice issued or direction given thereunder or without the written permission of the Commissioners at a meeting.

Breach of by-laws in regard to house-drain, etc.

¹These words were added by sec. 42 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

*(Part III.—Chapter VII.—Conservancy and Drainage.—
Secs. 261—263.)*

Location of house-drains, privies, etc.

261. No person shall, without the written permission of the Commissioners at a meeting, construct or keep any house-drain, service-privy, urinal or cess-pool within fifty feet of any tank, well, or water-course or any reservoir for the storage of water or construct any privy with a door or trap-door opening into any road or drain.

Powers of Commissioners to inspect latrines, urinals, etc.

262. (1) All latrines, urinals, sinks, cess-pools and drains shall be subject to the control of the Commissioners and the Commissioners or any officer authorised by them in this behalf may inspect any latrine, urinal, cess-pool, sink, drain or receptacle for sewage or offensive matter at any time between sunrise and sunset, after notice in writing to the occupier of the premises in which such latrine, urinal, cess-pool, sink, drain or receptacle is situated and may, if necessary, cause the ground to be opened where they or he may think fit for the purpose of inspection or of preventing or removing any nuisance arising from such latrine, urinal, cess-pool, sink, drain or receptacle.

(2) The expense of such inspection and of causing the ground to be closed and made good as before shall be borne by the Commissioners, unless the latrine, urinal, cess-pool, sink, drain or receptacle is found to be in bad order or condition or to have been constructed in contravention of any provisions of, or made under, this or any other enactment, in which case such expense shall be recovered from the owner or occupier.

Powers of Commissioners to require repair, alteration, removal of latrine, etc.

263. (1) The Commissioners may require by notice the owner or occupier of any land or building, within a period to be specified in the notice,—

- (a) to close, remove, alter, repair, disinfect or put in good order any cess-pool, drain or receptacle for sewage, offensive matter or rubbish pertaining to such land or building, to provide to their satisfaction access from a house-gully or lane to any service-privy or service-urinal in or on such land or building, or to demolish any privy or urinal constructed, rebuilt or altered in or on such land or building in contravention of section 261 or any by-law framed under section 269 or section 277 ;
- (b) to provide such cess-pools, drains or receptacles for sewage, offensive matter or rubbish, as should, in their opinion be provided for the building or land whether in addition or not to any existing ones ; or
- (c) to cause any latrine or urinal provided for the building or land to be shut off by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood ;

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In clause (d) of sub-section (1) of section 263, omit the words, "rainage."
"the valuation of which is not below an amount to be fixed by the
Commissioners at a meeting".

(Omitted by West Ben. Act VII of 1969, section 9.)

d for a build-
not below an
at a meeting

[No. 6, dated the 1st May, 1970.] or replaced by a septic tank
latrine.

(2) When requiring under sub-section (1) any thing to be
provided, altered or done, the Commissioners may specify in the
notice the description of the thing to be provided, the pattern to
conform with which the thing is to be altered, and the manner in
which the thing is to be done.

264. (1) Where a privy or privies belonging to one or more
premises are so placed as in the opinion of the Commissioners to
afford to the municipal conservancy staff no suitable means of
access thereto for the purpose of cleansing such privy or privies,
the Commissioners may, by written notice to the owner or
owners of such privy or privies, require them to provide a house-
gully of such dimensions and so paved and drained as they may
think necessary for such purpose.

Powers of
Commis-
sioners
to require
construc-
tion of
house-
gully.

(2) If such notice be not complied with within the time fixed
by the Commissioners, they may themselves acquire land and
construct such house-gully, and the expenses thereby incurred
shall be paid by the owner in default, and where there is more
than one owner, by the owners in such proportion as may be
settled—

(a) by the Commissioners at a meeting ; or

(b) in case of dispute, by the District Magistrate.

(3) The house-gully after construction shall be deemed to be a
private street unless and until it vests in the Commissioners in
accordance with the provisions of section 229.

265. When, under sub-section (1) of section 263, an owner or
occupier is required by the Commissioners to use disinfectants
the Commissioners may themselves supply disinfectants or
deodorants for such use at cost price, and the expenses thereby
incurred shall be considered as an arrear of tax, and be recover-
able as such from the owner of the cess-pool, drain or receptacle,
as the case may be, or the Commissioners at a meeting may, if
they think fit, order that such expense shall be paid from the
Municipal Fund.

Supply of
disinfect-
ants by
Commis-
sioners.

266. The owner or occupier of any premises to which any
latrine, urinal, cess-pool, drain or other receptacle for sewage or
offensive matter pertains, shall keep in a proper state such lat-
rine, urinal, cess-pool, drain or other receptacle :

Neglect
to keep
latrine,
etc., in
proper
order.

Provided that no person who pays a conservancy-rate shall be
liable to punishment for non-compliance with the provisions of
this section where the default is exclusively due to the failure of
the Commissioners to perform their obligations under this Act.

¹Clause (d) was added by sec. 43 of the Bengal Municipal (Amendment)
Act, 1955 (West Ben. Act XXVII of 1955).

(Part III.—Chapter VII.—Conservancy and Drainage.—
Secs. 267—269.)

Scavenging
on
occasions
of fairs
and
festivals
and con-
tribution
from
persons
having
control
over
places of
pilgrimage.

267. The Commissioners in pursuance of a decision arrived at at a meeting shall make any special scavenging arrangements that may be necessary on occasions of fairs, festivals or other large assemblies of people, and in the case of such assemblies held in connection with any place of pilgrimage in or within two miles of the municipality, the Commissioners may require the persons having control over such place of pilgrimage to make such contribution as the ¹[State Government] may on each such occasion approve towards the cost of such arrangements.

Power to
Commis-
sioners
to employ
special
establish-
ment for
removing
excessive
rubbish,
sewage or
offensive
matter.

268. Where in the opinion of the Commissioners at a meeting the accumulation of rubbish, sewage or offensive matter on any premises, or the amount of rubbish, sewage or offensive matter from any premises deposited on any place other than a place set apart by the Commissioners for the disposal of rubbish, sewage or offensive matter is excessive, they may sanction the employment of special establishment for the cleansing of such premises or for the removal of such rubbish, sewage or offensive matter and may impose on the owner or occupier of such premises such fee as they may deem proper to defray the cost of such establishment.

By-laws relating to conservancy.

Power to
make
by-laws
regarding
conser-
vancy.

269. The Commissioners at a meeting may make by-laws—
- (a) regulating the disposal of sewage, offensive matter, the carcasses of animals and rubbish ;
 - (b) requiring notice of intention to construct, repair or alter a privy or urinal or any appurtenances thereof and determining the plans, specifications or other particulars to be furnished therewith ;
 - (c) regulating the giving or refusing of sanction to the construction, repair or alteration of privies or urinals or appurtenances thereof, their position, design, ventilation, flooring, drainage, and providing for their proper and efficient maintenance ;
 - (d) where there is an underground sewerage system providing for the proper connection of privies and urinals therewith and the fees to be charged in this behalf and regulating the material, size, laying, position, trapping, ventilation and flushing of all private pipes or sewers pertaining to such privies or urinals, and the proper construction, flooring and ventilation of connected privies and urinals and for the provision of all appurtenances thereof ;
 - (e) regulating the position, construction and maintenance of cesspools and sinks ; and
 - (f) generally regulating conservancy.

¹ See foot-note 2 on page 208, ante.

of 1932.]

*(Part III.—Chapter VII.—Conservancy and Drainage.—
Secs. 270—274.)*

Drainage.

270. The Commissioners in pursuance of a decision arrived at at a meeting may construct within or, subject to the sanction of the ¹[State Government], outside the municipality, such drains as they think necessary for keeping the municipality properly cleansed and drained and may carry such drains through, across or under any street :

Construction of public drains.

Provided that no drain shall be constructed within the limits of a Cantonment without the approval of the ¹[State Government] and otherwise than with the concurrence of the Officer Commanding-in-chief the Command in which such Cantonment is situated or, in the event of such concurrence being withheld, with the previous sanction of the ²[Central Government].

271. (1) The Commissioners in pursuance of a decision arrived at at a meeting may, from time to time, enlarge, lessen, alter the course of, cover in or otherwise improve a municipal drain and may discontinue, close up or remove any such drain.

Alteration of public drains.

(2) The exercise of the power conferred by sub-section (1) shall be subject to the condition that the Commissioners shall provide another and equally effective drain in place of any existing drain of the use of which any person is deprived by the exercise of the said power.

272. The owner or occupier of a building or land shall be entitled to cause his drains to empty into the municipal drains, provided that he first obtains the written permission of the Commissioners, and that he complies with such conditions, consistent with any by-law, as the Commissioners at a meeting prescribe, as to the mode in which and the superintendence under which the communications are to be made between private drains and municipal drains.

Use of public drains by private owners.

273. No person shall, without the written consent of the Commissioners first obtained, make or cause to be made, or alter, or cause to be altered, any drain or branch drain leading into any of the municipal sewers or drains or into any water-course, street or land vested in the Commissioners, and the Commissioners, may cause any drain or branch drain so made or altered, to be demolished, altered, remade or otherwise dealt with as they shall think fit ; and the expenses thereby incurred shall be paid by the persons making or altering such drain.

Power to order demolition of drain constructed without consent of Commissioners.

274. (1) If it appears to the Commissioners at a meeting that a group or block of buildings may be drained or improved more economically or advantageously in combination than separately, and if a municipal sewer or drain of sufficient size already exists or is about to be constructed within one hundred feet of any part of such group or block of buildings, the Commissioners may cause such group or block of houses to be so drained and

Group or block of buildings, etc., may be drained by a combined operation.

¹See foot note 2 on page 297 *ante*.

²This proviso was inserted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

*(Part III.—Chapter VII.—Conservancy and Drainage.—
Sections 275—277.)*

improved, and the expenses thereby incurred shall be recovered from the owners of such buildings, in such proportions as shall to the Commissioners seem fit.

(2) Not less than one month before any such work is commenced the Commissioners shall give to each such owner—

- (a) written notice of the nature of the proposed work ;
- (b) an estimate of the expenses to be incurred in respect thereof and of the proportion of such expenses payable by him.

Power to Commissioners to enforce drainage of undrained premises situate within one hundred feet of a municipal drain.

275. When any premises are, in the opinion of the Commissioners at a meeting, without sufficient means of effectual drainage, and a municipal drain or some place approved by the Commissioners for the discharge or drainage is situated at a distance not exceeding one hundred feet from any part of the said premises, they may, by written notice, require the owner of the said premises—

- (a) to make a house-drain, emptying into such municipal drain or place, of such material, size and description and with such flushing arrangements as the Commissioners may prescribe ;
- (b) to remove any existing house-drain, or other appliance or things used or intended to be used for drainage, which is injurious to health :

Provided that the land necessary for making the house-drain empty into the municipal drain or approved place may be acquired by the Commissioners at the cost of the owner of the said premises.

Power to Commissioners to enforce drainage of undrained premises in other cases.

276. When any premises are, in the opinion of the Commissioners at a meeting, without sufficient means of effectual drainage, and there is no municipal drain within one hundred feet of any part of the said premises, they may, by written notice require the owner of the premises to construct—

- (a) a close cess-pool of such material, size and description, and in such position, as they may prescribe, and
- (b) a house-drain communicating with such closed cess-pool.

By-laws relating to drainage.

Power to Commissioners to make by-laws.

577. The Commissioners at a meeting may make by-laws—

- (a) requiring every person who intends to construct, repair, add to or alter a house-drain or cess-pool, to submit an application to the Commissioners with such plans and other particulars as may be prescribed and regulating the giving and refusing of sanction to such application ; and
- (b) regulating the material, size, laying, flushing, ventilation, trapping, and position of drains and generally their construction, repair and maintenance.

of 1932.]

(Part III.—Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 278, 279.)

CHAPTER VIII.

Water-supply, Lighting, Drainage and Sewerage Systems.

278. (1) It shall be lawful for the Commissioners of every municipality—

Commissioners to provide water-supply, drainage and lighting.

- (a) to provide a sufficient supply of water for the domestic use of the inhabitants ;
- (b) to provide and maintain a sufficient system of drainage and conservancy ; and
- (c) to cause the public streets to be sufficiently lighted.

(2) When it has been determined that a water-rate, conservancy-rate, or lighting-rate shall be imposed within a municipality the Commissioners shall—

- (a) provide a sufficient supply of water for the domestic use of the inhabitants ; or
- (b) provide and maintain a sufficient system of drainage and conservancy ; or
- (c) cause the public streets to be sufficiently lighted, as the case may be.

279. (1) Subject to the rules made by the ¹[State Government] under section 311 and in accordance with sanction granted under those rules, the Commissioners of any municipality or such Commissioners acting conjointly with any other local authority, may in pursuance of a decision arrived at at a meeting, within or without a municipality,—

Construction of water-works, drainage or sewerage works.

- (a) construct water works, or drainage or sewerage works or works required for the introduction of a system of lighting by electricity, gas or otherwise, and
- (b) from time to time enlarge, lessen, alter the course of, or otherwise modify or discontinue, close up, or remove the same.

(2) The ¹[State Government] may advance from the public funds on the security of the Municipal Funds and in the case of a joint scheme on the security of the municipalities and other local authorities, if any, concerned therein, the cost of preparing and carrying out any drainage, water-supply, sewerage, or lighting scheme sanctioned by the Government under the provisions of sub-section (1), and such advance shall be recoverable under Local Authorities Loans Act, 1914, and all the provisions of that Act and the rules made thereunder referring to the recovery of loans shall be applicable to such advance.

IX of
1914.

¹See foot-note 2 on page 297, ante. —

[Ben. Act XV]

(Part III.—Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 280, 281.)

Power to
appoint
an officer
to execute
the work.

280. The ¹[State Government] may, on the application of the Commissioners at a meeting or of the local authority acting with them under the provisions of section 279, direct that any works specified in any scheme or joint scheme for the purposes of section 279 shall be executed by an officer to be appointed by the ¹[State Government] and shall fix the remuneration of such officer (provided that the cost of the scheme as sanctioned be not exceeded) and may specify a period within which the work shall be completed, and may extend such period from time to time as may be necessary.

Power to
compel
municipality to
provide
proper
drainage,
sewerage,
etc.

281. (1) If at any time it appears to the ¹[State Government] that the Commissioners of any municipality have made default in providing their municipality or any part of it with proper and sufficient drains or sewers or in providing a good and sufficient supply of water or lighting, having regard to the financial resources of the municipality, and that danger arises from such default to the health or safety of the inhabitants of the municipality or any part of it, the ¹[State Government] may cause a scheme of drainage, sewerage, lighting or water-supply to be prepared by such persons as it may depute for the purpose.

(2) When a scheme has been prepared for a municipality under sub-section (1), the ¹[State Government] may call upon the Commissioners of such municipality to show cause at a meeting why they should not be required to carry out the scheme.

(3) The ¹[State Government] shall consider any objections and suggestions which may be submitted by the Commissioners and, if satisfied that the execution and maintenance of the scheme will not subject the financial resources of the municipality to any undue strain, may, subject to the rules framed under section 311, sanction the scheme with such modifications, if any, as it may think proper and specify a period during which the scheme shall be carried out.

(4) If the scheme is not carried out within the period fixed, the ¹[State Government] may, by order, appoint some person to carry it out and may direct that the cost of the works including the remuneration of the persons appointed, and of the supervising establishment, the cost of land acquisition and any other incidental charges shall be paid within such time as it may fix from the Municipal Fund, and may, if necessary, direct that any rate or rates authorised under this Act shall be levied or increased (but not so as to exceed any *maximum* prescribed in that behalf) and may further, or as an alternative, advance any sum of money, required in its opinion for the execution of the scheme, from the public funds on the security of the Municipal Fund and such advance shall be recoverable under the Local Authorities Loans Act, 1914, and all the provisions of that Act and the rules made thereunder referring to the recovery of loans shall be applicable to such advance.

IX of
1914.,

¹See foot-note 2 on page 297, *ante*.

of 1932.]

(Part III.—Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 282—284.)

(5) The person appointed under sub-section (4) may, for the purpose of executing the scheme, exercise any of the powers conferred on the Commissioners by or under this Act, which are specified in that behalf in the order issued under sub-section (4).

282. (1) If the ¹[State Government] is of opinion that the conditions described in sub-section (1) of section 281, prevail in two or more adjoining municipalities, or any part thereof and that in the interests of efficiency and economy, a joint drainage, sewerage, lighting or water-supply scheme should be prepared for both or all such municipalities or any part thereof, it may cause a joint scheme to be prepared accordingly.

Power to compel execution of joint drainage schemes, etc.

(2) All the provisions of section 281 shall apply *mutatis mutandis* to such joint scheme and the ¹[State Government] shall determine what proportion of the cost of preparing, executing and maintaining such scheme shall be borne by the Commissioners of each municipality concerned.

283. (1) Where the ¹[State Government] causes a scheme to be prepared under section 281 or section 282 and the Commissioners of the municipality or municipalities concerned and the local authority or local authorities of any other area or areas apply to have the scheme extended so as to serve such area or areas, the ¹[State Government] may, by order notify its general approval to such extension, determine what proportion of the cost of preparing, executing and maintaining the scheme shall be paid by such other local authority or local authorities and prescribe conditions for the punctual payment of such proportion.

Extension of drainage schemes, etc.

(2) A copy of such order shall be sent to the Commissioners of each municipality concerned and to such other local authority or local authorities, and if they request that the proposed extension of the scheme shall be made, the ¹[State Government] shall, subject to the rules made under section 311, finally sanction such extension.

284. If at any time after any joint scheme has been finally sanctioned any dispute arises between the Commissioners and any other local authority concerned in such scheme respecting such matters as supervision, management, maintenance, extension, repairs, alterations, the quantity of water or lighting to be supplied to each municipality or to any area under the control of any other local authority concerned, connection with the mains and the fees charged therefor and the like, a reference shall be made to the ¹[State Government], whose orders shall be final and shall not be questioned in any court :

Disputes as to joint schemes.

*Provided that, if the dispute is between the Commissioners and a Cantonment Authority or the Port Authority of a major

* See foot not 2 on page 297, *ante*.

* This proviso was inserted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act XV

(Part III.—Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Sec. 285.)

port, the orders of the ¹[State] Government shall be subject to the concurrence of the Central Government.

Power to
State
Govern-
ment to
take
control
over
imperfect,
inefficient
or
unsuitable
drainage
work, etc.

285. (1) If at any time it appears to the ²[State Government] that any drainage works, sewerage works, lighting works or water works executed under the provisions of sections 279, 281, 282 or 283, or vested in the Commissioners of any municipality are maintained or worked in an imperfect, inefficient or unsuitable manner, the ²[State Government] may, by written order, direct the Commissioners of the municipality or municipalities or other local authority or local authorities, within a period specified in the order, to show cause at a meeting why the drainage works, sewerage works, lighting works or water works with all plant, fittings and appurtenances thereof should not be handed over for such period as the ²[State Government] may fix to the control and management of such person as the ²[State Government] may appoint.

(2) If cause is not shown to the satisfaction of the ²[State Government] within the period specified in the order issued under sub-section (1), the ²[State Government] may, by order, direct that the drainage works, sewerage works, lighting works or water works with all plant, fittings and appurtenances thereof shall be handed over for such period as it may fix to the control and management of such person as it may appoint. During the period so fixed the complete control and management of the drainage works, sewerage works, lighting works or water works, as the case may be, shall be vested in the person so appointed, who shall engage such establishment for the purpose of maintaining and working such drainage works, sewerage works, lighting works or water works as the ²[State Government] may from time to time approve. The cost of such establishment and of all materials, implements, coal, stores and every thing necessary for the maintenance and working of the works shall be paid within such period as may be fixed by the ²[State Government] from the conservancy-rate, lighting-rate or water-rate, as the case may be, and may direct that such rate shall, for this purpose, be increased but not so as to exceed the *maximum* prescribed in that behalf.

(3) If the cost is not so paid, the District Magistrate may proceed as in section 551.

²(4) No action shall be taken under the foregoing provisions of this section in relation to a Cantonment Authority or the Port Authority of a major port without the previous approval of the Central Government.

¹This word was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²See foot-note 2 on page 297, *ante*.

²Sub-section (4) was inserted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937,

of 1932.]

(Part III.—Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 286—288.)

General provisions relating to the laying and connecting of pipes, sewers and the like.

286. (1) The Commissioners may carry any pipe, drain, sewer or channel of any kind for the purpose of providing or of carrying out and establishing or maintaining a system of drainage, sewerage, lighting or water-supply through, across, under or over any street or place, laid out as, or intended for, a street, and after giving reasonable notice in writing to the owner or occupier, into, through, across, under, over or up the side of any land or building whatsoever, situate within the limits of the municipality, and, for the purpose of introduction, or distribution of light or water, or for the outfall of water, or for the removal or outfall of sewage, or for drainage outfall, without such limits, and may at all times do all acts and things which may be necessary or expedient for repairing or maintaining any such pipe, drain, sewer or channel, as the case may be, in an effective state for the purpose for which the same may be used or intended to be used :

Power of Commissioners to lay or carry pipes, drains or sewers through private land.

Provided that no annoyance to the public more than is necessarily caused by the proper execution of the work is created by any such operation : and

Provided, further, that reasonable compensation shall be paid to the owner or occupier for any damage at the time sustained by him through or in consequence of any such operations.

(2) Whenever the ¹[State Government] has sanctioned any works without the limits of any municipality for bringing light or water into such municipality or for draining or disposing of the sewage of such municipality, the Commissioners may exercise all the powers which by this Act they may exercise within the municipality, in the construction, maintenance and repair of such work throughout the line of country in which such works are situated or through which they are to run.

287. In the event of any pipe, drain, sewer or channel being laid or carried above the surface of any land or through, over, or up the side of any building, such pipe, drain, sewer or channel, as the case may be, shall be so laid or carried as to interfere as little as possible with the rights of the owner or occupier to the due enjoyment of such land or building, and reasonable compensation shall be paid in respect of any substantial interference with any such right to such enjoyment.

Pipes, drains or sewers laid or carried above surface of ground.

288. Except in cases to which section 293 relates, the Commissioners shall cause not less than one month's notice in writing to be given to the owner or any occupier before commencing operations under section 286.

Previous notice to be given.

¹ See foot-note 2 on page 297, *ante*.

[Ben. Act XV]

(Part III.—Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 289—293.)

Power to permit connection to houses and lands.

289. (1) Subject to the prescribed conditions and restrictions and to such terms as the Commissioners may from time to time determine, the Commissioners at a meeting may—

- (a) on application of the owner or occupier of any house or land paying the water-rate or lighting-rate, as the case may be, make or cause, or permit to be made communication or connection from any main, or distribution pipe, belonging to the Commissioners for the purpose of leading water or gas to such house or land, or
- (b) on the application of the owner or occupier of any house or land make, or cause or permit to be made, any connection or communication to such house or land from any drain, sewer, or channel constructed or maintained by or vested in the Commissioners.

(2) The Commissioners at a meeting may require the amount necessary for the execution through their own agency of any work under this section to be paid or deposited before such work is executed by them.

Power to make or require connections in certain cases.

290. ¹(1) In any case in which a service-pipe from a main supplies water to two or more holdings, the Commissioners may, by written notice, require the owner of such holdings to lay down separate service-pipes for the separate holdings, and the expense of so doing shall be borne by all such owners in such proportions as may be determined by the Commissioners.

Power to establish meters and the like.

291. The Commissioners may establish meters for the purpose of testing the quantity or quality of any gas supplied to the house or land of any person or to or for the use of any person or business.

Attachment of meters.

292. For the purpose of measuring and recording the amount of water consumed, the Commissioners may fix a meter at a convenient point between the holding of the consumer and the municipal main.

Power to enter premises.

293. (1) Any officer authorised in this behalf by the Commissioners may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land for the purpose of inspecting or repairing any water, gas or other installation and for taking readings of meters connected therewith.

(2) If such officer at any such time is refused admittance into such house or land for the purposes aforesaid, or is prevented from making such examination, the Commissioners may forthwith cut off the supply of gas or water, as the case may be, from such house or land :

Provided that nothing hereinbefore contained shall authorize an entry into any room appropriated to women, unless reasonable notice in writing and opportunity is given to enable the women to remove to some part of the premises where their privacy may be preserved.

¹ See the figure and brackets "(1)", are unnecessary.

of 1932.]

(Part III.—Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 294—298.)

294. Whenever water or gas is supplied under this chapter through a meter, it shall be presumed that the quantity or quality indicated by the meter has been consumed until the contrary is proved.

Presumption as to correctness of meter.

295. The expense of providing, attaching and replacing a meter shall be borne by the person requiring the supply or, if the service-pipe or connection has been laid down or made before the commencement of this Act, by the owner of the house or land, except in the case of a special agreement to the contrary between the owner and the occupier. Such expense shall be recovered in one or more instalments according as the Commissioners think proper:

Cost of providing, attaching and replacing meter.

Provided that the Commissioners shall bear the cost of maintaining meter in good order and replacing a meter which is out of order or under repair owing to an inherent defect and not owing to its having been tampered with.

296. When any meter attached to the service-pipe or connection of any house or land is out of order or under repair, the Commissioners shall forthwith replace it by another meter.

Commissioners to replace damaged meter.

297. (1) If the owner or occupier of any house or land to which water or gas is supplied through a meter desires to have the meter tested, he may send a written application to the Commissioners, and such application shall be accompanied by a fee of two rupees.

Testing of meter.

(2) Upon receipt of any such application and fee the Commissioners shall forthwith cause such meter to be tested at a time and place to be specified in a notice to be served upon such owner or occupier.

(3) If such meter is found, upon being so tested, to be incorrect by more than two *per cent.*, the said fee shall be returned to the person who sent it.

298. (1) No person shall fraudulently—

Fraud in respect of meter.

(a) alter the index to any meter, or prevent any meter from duly registering the quantity or quality of water or gas supplied, or

(b) abstract or use water or gas before it has been registered by a meter, set up for the purpose of testing the quantity or quality of the same.

(2) Where there has been any such alteration, prevention, abstraction or use the existence of artificial means under the control of the consumer for causing any such alteration, prevention, abstraction or use shall be evidence that the consumer has fraudulently effected the same.

[Ben. Act XV**(Part III.—Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 299—302.)**

Injuring
meter or
fittings.

299. No person shall wilfully or negligently injure or suffer to be injured any meter or any of the fittings of any meter.

Mainte-
nance of
supply of
water.

300. The Commissioners at a meeting shall from time to time determine what supply of water for domestic purposes shall be maintained in their service-pipes and mains, and during what hours such supply shall be continued.

Supply for
business.

301. (1) The Commissioners at a meeting may supply and may at any time after giving reasonable notice cease to supply water for purposes other than domestic purposes.

(2) For all water supplied under sub-section (1) payment shall be made at such rates and on such conditions as the Commissioners at a meeting may from time to time prescribe.

(3) No person shall, without the written permission of the Commissioners, use, for other than domestic purposes, water supplied under this chapter for domestic purposes.

Free
supply of
certain
quantity
of water for
domestic
purposes.

302. (1) The occupier of every premises to which water is supplied by the Commissioners under this chapter shall be entitled to have, for each rupee paid quarterly as the water-rate on account of such premises and free of further charge such quantity of water per quarter for domestic purposes as the Commissioners at a meeting may from time to time prescribe.

(2) All water supplied in excess of the free allowance to which an occupier is entitled under sub-section (1) shall be paid for by him at a rate to be fixed from time to time by the Commissioners at a meeting.

(3) If such premises are ordinarily occupied by two or more persons holding in severalty, the owner shall be liable for water supplied in excess as referred to in sub-section (1); but such owner shall be entitled to recover rateably from the several occupiers any amount so paid.

(4) Every incoming or outgoing occupier of any metered premises shall at least three clear days before entering into the occupation of or vacating such premises, as the case may be, cause a written notice to be served upon the Commissioners stating the date on which he intends to occupy or vacate the premises and requiring the Chairman to cause the meter to be read for the determination of the liability, if any, for any excess consumption of filtered water on the date of such occupation or the date of such vacation of the premises, as the case may be.

(5) Upon receipt of such notice the Chairman shall cause the meter to be read and furnish such occupier with a statement of such meter reading.

(6) The outgoing occupier shall ordinarily be liable to pay for any excess supplied up to the date of his vacating the premises;

of 1932.]

(Part III.—Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 303—305.)

and the incoming occupier's liability for any excess consumption of filtered water shall ordinarily accrue from the commencement of his occupation :

Provided that where no written notice is delivered to the Commissioners under sub-section (4), the Commissioners shall be entitled to realise from such incoming occupier the full proportionate amount of the charges for excess water consumed, on the basis of the next quarterly or other reading of the meter made after the occupation of the incoming occupier, or such less amount as the Commissioners may think fit, regard being had to the number of days in any quarter during which the premises were occupied by such incoming occupier, the number of inmates during that period and the amount of free allowance to which such occupier may be entitled under sub-section (1).

303. (1) Before a connection for the supply of water from the distribution mains of the Commissioners to any premises is sanctioned, the Commissioners may cause all the works, pipes and fittings within the said premises to be inspected by an officer appointed by them in this behalf.

Inspection of works and pipes before connection.

(2) The cost of such inspection shall be payable in advance by the person applying for such connection at such rates as the Commissioners at a meeting shall from time to time direct.

(3) Until such officer has certified to the Commissioners that the works, pipes and fittings have been executed and put up in a satisfactory manner a connection with the Commissioners' service pipes shall not be permitted.

(4) Notwithstanding anything contained in this section if at any time after a certificate has been granted under sub-section (3) the Commissioners are satisfied that any work, pipe or fittings is unsuitable or results in a waste of water, the Commissioners may require the person who provided such work, pipe or fitting, or the owner of the premises, to alter or add to them at his own cost.

304. The Commissioners at a meeting may with the sanction of, and on such terms (if any) as may be approved by the ¹[State Government], supply water to a local authority or other person outside the municipality.

Permission to person outside the municipality to take water.

305. No person—

- (i) shall take, or cause to be taken for use outside the limits of the municipality water supplied by the Commissioners, without the permission of the Commissioners given under section 304 or in contravention of any conditions which they may prescribe ;

Water not to be taken out of municipality or wasted.

¹See foot-note 2 on page 297, ante.

[Ben. Act XV]

(Part III.—Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 306—309.)

- (ii) being the occupier of any premises to which water is supplied by the Commissioners under this chapter, shall, from negligence or other circumstances under the control of the said occupier, allow the water to be wasted, or allow the pipes, works or fittings for the supply of water in his premises to be out of repair so as to cause waste of water ;
- (iii) shall otherwise cause waste of water supplied by the Commissioners ;
- (iv) shall unlawfully flood, draw off, divert or take water from, any water-works belonging to, or under the control of, the Commissioners, or from any water or streams by which such water-works are supplied.

Owner to bear the cost of keeping works in repair.

306. Except in the case of a special agreement to the contrary, the owner of any premises shall bear the expenses of keeping all works connected with the supply of water to such premises in substantial repair, and if he fails to do so, the occupier may, after giving the owner three days' notice in writing, himself have the repairs executed and deduct the expenses thereof from any rent which is due from him to the owner in respect of such premises :

Provided that nothing in this section shall affect the liabilities of parties under leases executed previous to the extension of this chapter to the municipality in which the said premises are situated.

Estimate and specification of works to be sent.

307. No work for introducing a supply of water to any premises shall be commenced by the owner without sending a specification and estimate of the cost thereof to the occupier, nor by the occupier without sending such specification and estimate to the owner.

Power to take charge of private connections.

308. The Commissioners at a meeting may, if they think fit, take charge of all communication-pipes and fittings of any existing private water-works connected with the municipal water-supply up to and including the stop-cock nearest the supply-main for the said works, and such communication-pipes and fittings shall thereafter vest in and be maintained at the expense of, the Commissioners as municipal water-works.

Power to cut off or to turn off supply of water to premises.

309. (1) Notwithstanding anything contained in this chapter the Commissioners may cut off the connection between any of their water-works and any premises to which water is supplied from such works, or may turn off such supply, in any of the following cases, namely :—

- (a) if the premises are unoccupied ; or
- (b) if, after receipt of a written notice from the Commissioners requiring him to refrain from so doing, the owner or occupier of the premises continues to use the water or to permit the same to be used in contravention of this Act or any rule or by-law made thereunder ; or

of 1932.]

(Part III.—Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Sec. 309.)

- (c) if the occupier of the premises contravenes section 298, section 299, sub-section (3) of section 301 of section 305 ; or
- (d) if any pipes, taps, works or fittings connected with the supply of water to the premises be found, on examination by any officer of the Commissioners authorised by them in this behalf, to be out of repair to such an extent as to cause so serious a waste or contamination of water that in the opinion of the Chairman immediate prevention is necessary ; or
- (e) if the use of the premises for human habitation has been prohibited under section 366, from the date from which the premises are to be vacated under the order of the Magistrate ; or
- (f) if there is any water-pipe situated within the premises to which no tap or other efficient means of turning the water off is attached ; or
- (g) if by reason of a leak in the service-pipe or fitting damage is caused to the public street and immediate ¹[prevention is] necessary :

Provided as follows :—

- (i) water supplied for flushing privies or urinals shall not be cut off or turned off ;
- (ii) water shall not be cut off or turned off in any case referred to in clause (e) unless written notice of not less than forty-eight hours has been given to the occupier of the premises.

2 *

¹These words were substituted for the word "preventions" by sec. 2 and 3 of the Bengal Municipal Amendment Act, 1938 (Ben. Act I of 1938).

Page 433—

***Delete footnote 2.**

and
the

"(h) if the owner or occupier of the premises refuse or neglect to pay, for a period of fourteen days after he has been served with a notice of demand, any of the fees or charges, namely, water-rate proper, charges for excess consumption of water for domestic and other purposes and other incidental charges for services on account of water-supply, imposed under the provisions of this Act and in accordance with the rules and by-laws framed thereunder."

Vide paragraph XIII of the Revenue Department notification No. 3435-H.A., dated the 28th February, 1936, published in the *Calcutta Gazette*, of the 5th March, 1936, Part I, pages 487-488.

[Ben. Act XV

(Part III.—Chapter VIII.—Water-supply, Lighting, Drainage and Sewerage Systems.—Secs. 310, 311.)

(2) The expense of cutting off the connection or of turning off the water and of restoring the same, as determined by the Commissioners in any case referred to in sub-section (1), shall be paid by the owner or occupier of the premises :

Provided that no charge for such expense shall be made in the cases mentioned in clause (a) and clause (e) of the said sub-section.

(3) No action taken under or in pursuance of this section shall relieve any person from any penalties or liabilities which he may otherwise have incurred.

Applica-
tion of the
Indian
Electricity
Act, 1910.

310. Notwithstanding anything in this ¹chapter all matters relating to the generation, transmission, supply or use of electrical energy in a municipality shall be regulated by the provisions of the Indian Electricity Act, 1910.

IX of
1910.

Power to
make rules.

311. The ²[State Government] may make rules to regulate—

- (a) the preparation of plans and estimates for water works or for the introduction of a system of lighting by electricity, or gas, or of drainage or sewerage, where such works or system are or is to be partly or wholly constructed or carried out at the expense of the Commissioners ;
- (b) the power of the Commissioners or the ²[State Government] to accord sanction to such plans and estimates ;
- (c) the publication in the ³[Official Gazette] of the particulars of, and the nature of any such, work or scheme, its cost, and the manner in which it is to be financed and carried out ;
- (d) the size and nature of water works, mains, pipes, drains, sewers or channels to be constructed or laid by the Commissioners for the supply of water or gas, or for drainage or sewerage ;
- (e) the maintenance of municipal water works and of pipes and fittings in connection therewith ;
- (f) the size and nature of the stand-pipes or pumps to be erected by the Commissioners and of the ferrules and all pipes, stand-pipes, stop-cocks, taps, hydrants and other fittings, whether within or outside any premises, that may be prescribed or necessary for the regulation of the supply and use of water or gas ;

Page 434—

*Delete footnote 1.

Part I, pages 487-488.

¹See foot-note 2 on page 297, ante.

²See foot-note 2 on page 301, ante.

n 310
raph
28th
1936,

of 1932.]

(Part III.—Chapter VIII.—Water-Supply, Lighting, Drainage and Sewerage Systems.—Sec. 311.)

- (g) the mains or pipes in which fire plugs are to be fixed and the places at which keys of the fire plugs are to be deposited ;
- (h) the periodical analysis by a qualified analyst of the water supplied by the Commissioners ;
- (i) the conservation of, and the prevention of injury or contamination to, sources and means of water-supply and appliances for the distribution of water, whether within or without the limits of the municipality ;
- (j) the manner in which connections with water-works or with the lighting, drainage or sewerage system of the Commissioners shall or may be constructed, altered or maintained, the fees to be levied for such connections and the person by whom they shall be paid, and the agency to be employed for such construction, alteration or maintenance ;
- (k) the rates at which the charges for water or gas supplied may be levied by the Commissioners and the use, maintenance and testing of meters and the rebate, if any, to be allowed where a meter is found to be defective ;
- (l) the regulation of all matters and things connected with the supply and use of water or gas, and the turning on and turning off and preventing the waste of water or gas ; and
- (m) any other matter relating to the supply of water or gas or of drainage or sewerage in respect of which this Act makes no provision or insufficient provision and further provision is, in the opinion of the ¹[State Government], necessary :

Provided that in any rules made under this section regarding the construction or carrying out of any works for the supply of water or gas, or for drainage or sewerage by the Public Health Department provision shall be made that the Commissioners of the municipality concerned shall have an opportunity of seeing the terms of the contract for the execution of works, before it is executed.

¹See foot-note 2 on page 297, *ante*.

[Ben. Act XV

(Part III.—Chapter IX.—Buildings.—Secs. 312—314.)

CHAPTER IX.

BUILDINGS.

*Application of Schedule VI.¹*Applica-
tion of
Schedule
VI¹, etc.

312. (1) The ²[State Government] may, by notification, declare that Schedule VI¹ or any part thereof shall be in force in such municipalities as may be specified in the notification and may, on the application of the Commissioners of a municipality, cancel or modify such notification in respect of any municipality so specified.

(2) The provisions contained in sections 315, 317 to 327 and 329 shall not apply to any municipality, unless and until they have been extended thereto by a notification issued by the ²[State Government] when Schedule VI¹ or any part thereof is brought into force under sub-section (1) :

Provided that in the case of any municipality to which the provisions of Part VI of the Bengal Municipal Act, 1884, corresponding to the provisions of sections 315, 317 to 327 and 329 are in force immediately before the commencement of this Act, all the said sections shall be in force in such municipality without being expressly extended thereto.

Ben. Act
III of
1884.*Building-sites and erection of buildings.*Use of
building-
sites and
erection of
buildings.

313. No piece of land shall be used as a site for the erection of a building and no building shall be erected otherwise than in accordance with the provisions of this chapter and of any rule or by-law made under this Act, relating to the use of building-sites or to the erection of buildings, as the case may be, and in municipalities where Schedule VI¹ or part thereof is in force, in accordance with that Schedule or part thereof.

Commis-
sioners to
determine
site of
proposed
masonry
building.

314. If any question arises as to what, for the purposes of this Act, shall be deemed to be the site of any proposed masonry or framed building, the Commissioners at a meeting shall determine the same, and their decision shall be final.

Page 436—

* Delete footnote 1.

... Government notification No 8435 E A.,
dated the 28th February, 1936, published in the *Calcutta Gazette*, of the
5th March, 1936, Part I, pages 487-488.

² See foot note 2 on page 297, ante.

in Chapter IX
if, the words
stituted, vide

of 1932.]

(Part III.—Chapter IX.—Buildings.—Secs. 315—317.)

315. (1) Save with the special permission of the Commissioners at a meeting, no building (other than a hut) shall be erected unless—

Masonry building not to be erected without special permission in certain cases.

(a) the site of such building abuts on a public street, or a projected public street or a private street duly sanctioned and constructed in accordance with the provisions of this Act, or existing before the commencement of this Act, or

(b) there is access to the building from any such street by a passage or pathway, appertaining to such site, and not less than ¹[six feet] wide at any part.

(2) No building shall be erected so as to deprive any masonry or framed building of the means of access as provided in this section.

Exemptions.

316. The following buildings shall be exempted from the operation of sections 315, 317 to 327 and 329, namely:—

Exemptions.

(a) any building erected and used, or intended to be erected and used, exclusively for the purpose of accommodating a pump for pumping water to the highest stories of a building, or exclusively for the purpose of a plant-house, summer-house (not being a dwelling-house), poultry house or aviary, if the building be wholly detached from, and at a distance of at least ten feet from, the nearest adjacent building;

(b) any building erected or intended to be erected by, or with the sanction of the Commissioners, for use solely as a temporary hospital for the reception and treatment of persons suffering from any infectious or contagious disease; and

(c) any hoarding or like means of protection (other than a masonry wall) which the owner of any premises certifies to the Chairman not less than seven days after its erection to have been erected for the purpose of preventing the threatened acquisition of any easement over his own premises or any portion thereof, provided that the stability of such hoarding or other means of protection is certified by the Chairman.

Application for sanction.

317. Every person who intends to erect a building shall first submit an application in the form prescribed in Schedule VI^a to the Commissioners together with such plans, specifications and other particulars as may be prescribed in that Schedule or in any rule or by-law made in this behalf.

Application to erect building to be submitted in the

Page 437—

For footnote 1, substitute the following footnote, namely:—

¹In the application of the Act in the Darjeeling district (except Siliguri sub-division), for the words "six feet", the words "four feet" shall be substituted, vide L. S. G. Department notification No. 607/M1A-15/55, dated the 19th January, 1957, published in the *Calcutta Gazette* of the 14th February, 1957, Part I, page 553.

[Ben. Act XV

(Part III.—Chapter IX.—Buildings.—Secs. 318—321.)

Permission
to execute
work
when to be
given or
refused.

318. (1) Within thirty days, or in the case of huts, within fifteen days after the receipt of any application made under section 317, or of any information or documents, which the Commissioners may reasonably require the applicant to furnish before ~~Page 438—~~ whether permission shall be granted to execute an ~~in the aforesaid section the Commissioners~~ shall, by ~~After sub-section (2) of section 318, insert the following sub-~~ section, namely:—

(a) gra

(b) refi

(2) Whe
under clau
impose su
think fit.

(3) Whe
an appeal
that no o
pect of suc
Schedule V

“(2A) The Commissioners at a meeting may fix a scale of fees to be paid in respect of grant of permission under sub-section (1) to execute any work, at rates not exceeding—

(a) where the cubical extent of the work does not exceed three hundred cubic metres, ten rupees, and

(b) where the cubical extent of the work exceeds three hundred cubic metres, ten rupees for the first three hundred cubic metres and fifteen rupees for any additional three hundred cubic metres or part thereof;

Permission
to be
implied if
Commissioners
default in
coming to
a decision.

319. If
missioners
to execute
been grante
work, but
Act or of
thereto.

Provided that nothing in this sub-section shall apply in respect of grant of permission for erecting a hut.”

(Inserted by West Ben. Act VII of 1969, section 10.)

[No. 6, dated the 1st May, 1970.]

Notice
after
completion
of work.

320. Within one month after the completion of the erection of a new building (other than a hut) ^a[or a habitable portion of such building] the owner of the building shall send to the Commissioners a written notice of the fact of such completion.

Inspection
of work
requiring
sanction.

321. (1) The Chairman or any other person authorized by the Commissioners in this behalf may, at any time, and without notice, inspect any work in respect of which an application is required under section 317—

(a) while under construction, or

(b) within one month of the receipt of the notice of completion sent under section 320, or, in default of such notice, at any time after completion.

(2) If, on making any inspection under sub-section (1) the Chairman or other person so authorized finds that the building inspected is being or has been erected—

(a) subject to the provisions of section 319, otherwise than in accordance with the plans thereof which the Commissioners have approved or

Page 438—

*Delete footnote 1.

of 1932.]

(Part III.—Chapter IX.—Buildings.—Sec. 322.)

- (b) in such a way as to contravene any of the provisions of this Act or of Schedule VI¹ or of any rule or by-law made in this behalf,

the Chairman may, by written notice, require the owner of the building either to make such alterations as may be specified in the notice with the object of bringing the work into conformity with the said plans or provisions, as the case may be, or to appear before the Commissioners at a meeting and show cause why such alterations should not be made.

(3) If such owner does not appear and show cause under subsection (2) he shall be bound to make the alterations specified in such notice.

(4) If such owner appears and shows cause under sub-section (2), the Commissioners shall, after hearing him, either—

- (a) cancel the notice issued under that sub-section, or
(b) confirm the same, subject to such modifications (if any) as they may think fit.

322. The only grounds on which permission to erect a building may be refused are the the following, namely :—

Grounds on which permission to erect a masonry building may be refused.

- (a) that the work, or any of the particulars comprised in the plans or specifications would contravene some specific provision of this Act or of Schedule VI¹ or of some specific rule or by-law made in this behalf ; or
(b) that the application for such permission does not contain the particulars or is not prepared in the manner prescribed in Schedule VI¹ or in any rule or by-law made in this behalf ; or
(c) that any of the documents referred to in Schedule VI¹ or in any rule or by-law made in this behalf have not been signed in the manner prescribed ; or
(d) that any information or documents required by the Commissioners under this Act or Schedule VI¹ or under any rule or by-law made in this behalf has or have not been duly furnished ; or
(e) where the provisions of the Calcutta Improvement Act, 1911, have been extended to any municipality that, in the case of a new building falling within the street alignment or building-line of a public street projected under section 63 of the Calcutta Improvement Act, 1911, the permission of the Chairman of the Board of Trustees for the Improvement of Calcutta has not been obtained ; or
(f) that the applicant has not satisfied the Commissioners in regard to any objections which may have been taken on any of the grounds mentioned in this section, to the grant of the said permission.

Ben Act
V of 1911.

(Part III.—Chapter IX.—Buildings.—Secs. 323—326.)

Power as
to inflam-
mable
structures.

323. (1) The Commissioners at a meeting may, by public notice, direct that, within certain limits to be fixed by them, the roofs and external walls of huts or other buildings shall not be made or renewed with grass, mats, leaves or other highly inflammable materials without their consent in writing.

(2) The Commissioners at a meeting may, at any time by written notice, require the owner of any building which has an external roof or wall made of any such materials as aforesaid to remove such roof or wall within such reasonable time as shall be specified in the notice, notwithstanding that a public notice under sub-section (1) has not been issued or that such roof or wall was made with the consent of the Commissioners or before the issue of such public notice, if any :

Provided that in the case of any such roof or wall in existence before the issue of such public notice or made with the consent of the Commissioners, they shall make compensation for any damage caused by the removal which shall not exceed the original cost of constructing the roof or wall.

Power to
Commis-
sioners to
cancel per-
mission on
the ground
of material
misre-
presenta-
tion by
applicant.

324. If, at any time, permission to erect any masonry or framed building has been given, and the Commissioners at a meeting are satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the application made under section 317, or in the plans, elevations, sections or specifications submitted therewith in respect of such building, they may cancel such permission, and any work done thereunder shall be deemed to have been done without permission.

Duration
and expiry
of permis-
sion to
erect a
building.

325. (1) A permission to erect a building, granted under this chapter shall, unless it is renewed on an application made to the Commissioners for this purpose, continue only for one year after the date on which it is granted, unless the work of erection has been commenced within that period and in any case shall not continue for a period longer than two years from the said date unless it is so renewed.

(2) Any person who erects a building or continues the work of erection of a building, when the permission granted under this chapter has expired, shall be deemed to erect such building or to continue such work without sanction.

Application of Act to alterations of, and additions to, buildings.

Applica-
tion of
Act to
alterations
of and
additions
to build-
ings.

326. (1) The provisions of—

(a) this chapter,

(b) Schedule VI¹, and

(c) any rules or by-laws made under this Act,

relating to the erection of buildings, shall also apply to every material alteration of, or addition to, any building, but shall not apply to necessary repairs not involving any material alteration or addition.

of 1932.]

(Part III.—Chapter IX.—Buildings.—Secs. 327, 328.)

(2) An alteration or addition in or to a building shall for the purposes of this chapter and of Schedule VI¹ and of any rule or by-law, be deemed to be material if—

- (a) it increases or diminishes the height of, the area covered by, or the cubical capacity of the building, or any part thereof, or reduces the height, area or cubical capacity of any room in the building below the minimum prescribed in Schedule VI¹, or in any rule or by-law : or
- (b) it affects or is likely to affect prejudicially the stability or safety of the building or the condition of the building in respect of drainage, ventilation, sanitation or hygiene ; or
- (c) it converts into a place for human habitation a building or part of a building originally constructed for other purposes ; or
- (d) it is an alteration or addition declared by Schedule VI¹ or by any rule or by-law made in this behalf to be a material alteration or addition.

(3) If any question arises as to whether any addition or alteration is a necessary repair not affecting the position, safety, stability, use, sanitary condition or dimensions of a building or room, such question shall be referred to the Commissioners at a meeting and the decision of the Commissioners shall be final.

327. (1) In alteration of, addition to, or cancellation of Schedule VI¹ the ²[State Government] may make rules—

Rules.

- (a) for the regulation or restriction of the use of land as sites for building, and
- (b) for the regulation and restriction of building and of alterations in, or additions to, building.

(2) When Schedule VI¹ has been so altered, added to or cancelled, any reference made in this Act to the said Schedule shall be constructed as a reference to the Schedule as amended under sub-section (1) or, if the Schedule has been cancelled to the rules substituted therefor.

328. (1) The Commissioners of any municipality to which the provisions of Schedule VI¹ are not extended under section 312 shall at a meeting, if the ²[State Government] so requires, provide by means of by-laws for the control of the erection of buildings and of material alterations and additions to buildings to give effect to the provisions of this Act and of that Schedule in this behalf to such extent as local circumstances permit and subject to such modifications as local circumstances may require.

Special provisions in respect of less advanced municipalities.

(2) Where the provisions of Schedule VI¹ are extended only in part to any municipality the Commissioners shall, at a meeting, if the ²[State Government] so requires, regulate by means of by-laws the matters that are regulated by that part of Schedule VI¹ which is not extended to such municipality.

¹See foot-note 1 on page 436, *ante*.

²See foot-note 2 on page 297, *ante*.

[Ben. Act XV]

(Part III.—Chapter 1X.—Buildings.—Sec. 329.)

Powers to
make by-
laws regu-
lating
buildings.

329. (1) The Commissioners of a municipality to which the provisions of Schedule VI¹ have been extended under this Act in whole or in part may, and when required by the ²[State Government] shall, make at a meeting by-laws, consistent with this Act and Schedule VI¹ (or the part thereof extended to the municipality) applicable to building-sites or to buildings generally or to any class of buildings within the whole or any part of the municipality, and may by such by-laws—

- (a) determine the plans, specifications and other documents or particulars to be furnished with any application made for permission to construct, add to or alter house-drains, privies or urinals ;
- (b) declare an alteration or addition of any specific description to be a material alteration or addition although not falling within the scope of clauses (a), (b) or (c) of sub-section (2) of section 326 ;
- (c) prescribe that, on payment of fees in accordance with such scale as is specified in this behalf, plans and specifications shall be obtainable from the Commissioners or from an agency prescribed by the Commissioners ;
- (d) prescribe the type or description of buildings which may or may not, and the purposes for which a building may or may not, be erected in any specified area or areas ;
- (e) prescribe that builders and surveyors shall be licensed and that the erection of buildings shall not be permitted except by licensed builders and surveyors ;
- (f) prescribe the fees, to be paid by builders and surveyors for obtaining a license and the qualifications to be possessed by them ; and
- (g) prescribe, with reference to the erection of buildings, all or any of the following matters :—
 - (i) the materials and method of construction to be used for external and party walls, roofs and floors ;
 - (ii) the regulation of sites for buildings, and the materials and method of construction of fire-places, chimneys, drains, privies, urinals and cess-pools ;
 - (iii) the ventilation and flushing of drains, latrines, urinals and cess-pools, and the provision of access thereto from streets, and where a sewerage system has been provided, the connection of service privies with a sewer and the method of the connection ;

¹See foot-note 1 on page 436, *ante*.

²See foot-note 2 on page 297, *ante*.

of 1932.]

(Part III.—Chapter IX.—Buildings.—Sec. 329.)

- (iv) the proportion of any building-site, which shall not be built over, the amount of space to be left at the sides and back of any building and the area of courtyards in proportion to the floor area of rooms abutting thereon ;
- (v) the height of any building or portion of a building in relation to the width of the street or streets on which it abuts and to the space left open at the back of the building and forming a part of the site, and the height of any building or portion of a building abutting on a courtyard ;
the level, drainage and paving of courtyards ;
- (vi) the width of foundation, height of plinth, and stability of structure ;
- (vii) the minimum floor area, minimum height, and ventilation of rooms used or intended to be used for human habitation ;
- (viii) any other matter affecting the ventilation or sanitation of the building ;
- (ix) the regulation by specific rules of special classes of buildings in any of the above matters ;
- (x) the laying out of huts in a *bustee* in accordance with alignment lines, prescribed and demarcated on the ground ;
- (xi) the distance to be kept open between huts and alignment lines ;
- (xii) the means to be provided for egress from public buildings in case of fire ;
- (xiii) regulating in any manner not specifically provided for in this Act, the erection of any enclosure, wall, fence, tent, awning or other structure, of whatsoever kind or nature (other than a *hogla* or similar kind of temporary shed erected on ceremonial festive occasions), on any land within the limits of the municipality ; and
- (xiv) special rules in respect of any of the foregoing matters for any particular type or class of buildings which are used or which it is intended to use for any particular purpose.

(2) By-laws made by the Commissioners of a municipality to which the provisions of Schedule VI¹ have not been extended or have only been extended in part, shall be subject to the approval of the ²[State Government] and may provide for any of the matters specified in clauses (a) to (g) of sub-section (1) and also for the regulation of building-sites within the municipality, but

¹ See foot-note 1 on page 436, *ante*.

² See foot-note 2 on page 297, *ante*.

[Ben. Act XV]

(Part III.—Chapter IX.—Buildings.—Chapter X.—Bustees.
Sections 332—334.)

Institution of prosecutions for offences referred to in section 380 or section 381.

Power of Commissioners to stop erection of new buildings in certain cases.

332. Notwithstanding anything contained in section 532 or section 533 no prosecution for an offence referred to in section 330 or section 331 shall be instituted without the order or consent of the Commissioners at a meeting and the Commissioners before passing such order or giving such consent shall give to the owner or occupier of the building an opportunity of showing cause why such prosecution should not be instituted.

333. (1) In any case in which the erection of a new building, or any other work referred to in section 330 or section 331, has been commenced, or, is being carried on unlawfully as mentioned in those sections, the Commissioners may, by written notice, require the person carrying on such erection or other ¹[unlawful] work to discontinue the same, pending the decision of a Magistrate on an application to be made to him under that section.

(2) If any notice issued under sub-section (1) is not duly complied with, the Commissioners may, with the assistance of the police if necessary, take such steps as they may deem needful in order to stop the continuance of the unlawful work.

(3) If it appears to the Commissioners that it is necessary in order to prevent the continuation of the unlawful work, to depute any police or municipal officer to watch the premises, the cost of providing the same shall be borne by the person to whom the said notice was addressed.

CHAPTER X.

BUSTEES.

Preliminary.

Application of Chapter X.

²334. The provisions contained in this chapter shall not apply to any municipality, unless and until they have ³* wholly or in part, been extended thereto by a notification issued by the ⁴[State Government] in this behalf :

Provided that in the case of any municipality to which the provisions of Part VI of the Bengal Municipal Act, 1884, corresponding to any of the provisions of this chapter are in force immediately before the commencement of this Act, all the said provisions of this chapter shall be in force in such municipality without being expressly extended thereto.

Ben. Act
III of
1884.

¹This word was substituted for the word "unlawfully" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

²In any area to which the Calcutta Slum Clearance and Rehabilitation of Slum Dwellers Act, 1958 (West Ben. Act XX of 1958) applies, secs. 384 to 387 (both inclusive) of, and secs. E, F and G and Form B of Schedule VI to, this Act, shall stand repealed. Vide sec. 2(a) of West Ben. Act XX of 1958.

³The word "been" was omitted, by sec. 3 and the Second. Sch., *ibid*.

⁴See foot-note 2 on page 297, *ante*.

of 1932.]

(Part III.—Chapter X.—Bustees.—Secs. 335, 336.)

¹335. (1) The Commissioners at a meeting may define the external limits of any *bustee*, and may from time to time alter such limits.

Power to Commissioners to define limits of *bustee*.

(2) None of the powers conferred by any of the following sections of this chapter shall be exercised in respect of—

- (a) any *bustee* the total area of which, as comprised within the limits defined under sub-section (1), is less than two *bighas*, or
- (b) any masonry building existing in a *bustee* at the time when a standard plan is approved or alignments are prescribed under the provisions of this chapter for such *bustee*, as the case may be.

Sanitary measure with regard to bustees.

¹336. (1) If it appears to the Commissioners at a meeting that the condition of any *bustee* is insanitary or attended with risk of disease to the inhabitants of the neighbourhood, by reason of the manner in which the huts are constructed or crowded together, or of want of drainage, the impracticability of scavenging or for any other reason, they may after giving notice to the owners of the *bustee* cause the locality to be inspected by two persons appointed in this behalf, one of whom shall be registered medical practitioner or a person holding the diploma of Public Health and the other an engineer.

Power of Commissioners as to inspection of huts.

(2) The said persons shall forthwith—

- (a) sign and submit a written report on the insanitary condition of the said *bustee*,
- (b) annex to the report a plan approved by them as the standard plan of such *bustee*, and
- (c) specify in a schedule to be attached to the said report, as the improvements considered necessary to remove or abate the insanitary condition of the *bustee*,—
 - (i) the huts which should, wholly or in part, be removed ;
 - (ii) the streets, passages, drains and sewers which should be constructed ;
 - (iii) the means of lighting, water-supply, common bathing arrangements and common privy accommodation to be provided for the use of tenants ;
 - (iv) the tanks, wells and low lands which should be filled up ; and
 - (v) any other improvements they consider necessary in order to remove or abate the insanitary condition of the *bustee*.

A report (together with the schedule annexed thereto) made and signed under this section shall be sufficient evidence of the result of such inspection.

¹See foot-note 2 on page 446, *ante*.

(Part III.—Chapter X.—Bustees.—Secs. 337—340.)

Power to
serve
notice.

¹337. On receipt of the said report, the Commissioners at a meeting after hearing the objections (if any) of the owners of the *bustee* in respect of which the report has been made may approve the plan and schedule after making such modifications (if any) therein as they may think fit and may require the said owners or the owners or occupiers of the huts referred to in sub-clause (i) of clause (c) of sub-section (2) of section 336, or both of the owners of the *bustee* and the owners and occupiers of the huts, to carry out and execute, within a time to be fixed by the Commissioners for such purpose, all or any of the works specified in the aforesaid schedule or any portion thereof, respectively.

Payment
of expenses
incurred in
carrying
out
improve-
ments.

¹338. When any improvements required by a notice under section 337 are carried out by the Commissioners under the provisions of this Act, all expenses incurred thereby, including such reasonable compensation as the Commissioners at a meeting may think fit to pay the owners or occupiers of huts removed, shall be paid by the owners of the *bustee*, to the Commissioners, and shall constitute a charge upon such *bustee* :

Provided that, notwithstanding anything contained elsewhere in this Act, if it appears to the Commissioners at meeting that any such owner is unable, by reason of poverty, to pay such expenses, or any portion thereof, in the case of expenses relating to work, which should in the opinion of the Commissioners have been done by the owners or occupiers of huts within the *bustee*, they may order the same or any portion thereof to be paid out of the Municipal Fund, and in the case of expenses, which should be paid by the owner of the *bustee*, they may order the same or any portion thereof to be advanced out of the Municipal Fund, but thereafter to constitute a charge upon such *bustee*.

Disposal of
material
of huts
pulled
down.

¹339. (1) If in carrying out any improvements required by a notice under section 337, the Commissioners cause any hut or portion of a hut to be pulled down, they shall—

- (a) cause the materials of such hut or portion of a hut to be given to the owner of the hut, if such owner elects to take them, or
- (b) if the owner does not elect to take the materials, or if the owner be unknown or the title to the hut be disputed, cause such materials to be sold, and hold in deposit the proceeds of the sale together with any sum awarded as compensation under section 338.

(2) Any amount held in deposit under clause (b) of sub-section (1) shall be so held by the Commissioners until any person obtains an order from a competent Court for the payment to him of such amount.

Power to
purchase
or acquire
masonry
buildings
or land
in *bustee*.

¹340. (1) Any masonry building in a *bustee*, and any land appertaining to such building which it may be necessary to purchase or acquire for the purpose of making the streets or of passages, or of effecting any of the improvements specified in the schedule referred to in section 336, shall be shown in the standard plan

¹ See foot-note 1 on page 446, ante.

of 1932.]

(Part III.—Chapter X.—Bustees.—Secs. 341, 342.)

referred in that section, and the Commissioners may at any time after the receipt of the report made under that section, purchase or acquire—

- (a) any such masonry building or,
- (b) any land appertaining to such building, or
- (c) any such building, together with the land appertaining thereto or any portion thereof,

which is mentioned in that behalf in the schedule.

(2) Save as is provided in this section none of the powers conferred under the provisions of this chapter shall be exercised in respect of any building or land referred to in clauses (a), (b) or (c) of sub-section (1), but the fact that a masonry building is situated in a *bustee* shall not prevent action being taken with reference to such *bustee* under the provisions of this chapter.

¹341. (1) Every street or passage in a *bustee* which is shown in a standard plan approved under this chapter for that *bustee* and which is not already a public street shall, unless the Commissioners and the owners of the land on which such street or passage is situated otherwise consent as provided in section 229, be deemed to be a private street ; and the portion thereof which falls on the land of each owner shall belong to such owner :

Streets and passages shown in standard plan, if not public streets, to remain private.

Provided that any portion of any such street or passage which is situated on land purchased or acquired by the Commissioners under section 340 shall remain the property of the Commissioners.

(2) Every such private street shall, at all times, be kept open for scavenging purposes and for all other purposes of this Act in such manner as the Commissioners may require, and shall also be kept open for the use of all the tenants of the *bustee* :

IX of 1908.

Provided that, notwithstanding anything contained in the Indian Limitation Act, 1908, no use of any such street shall, by reason of any lapse of time, be held to confer a right-of-way on the public so as to bring the street within the definition of a public street.

¹342. The bathing arrangements and privy accommodation in a *bustee* which are shown in the standard plan approved under this chapter for such *bustee* as being common to the use of all or some of the tenants of the *bustee*, shall at all times be kept available for the use of such tenants :

Bathing arrangements and privy accommodation in *bustee*, as shown in standard plan to be kept open for use for tenants.

Provided that, notwithstanding anything contained in the Indian Limitation Act, 1908, if at any time the land on which any such bathing arrangements or privy accommodation are provided ceases to form part of such *bustee*, no such use shall, by reason of any lapse of time, be held to confer any right on any person so as prejudicially to affect the rights of the owner of such land.

¹See foot-note 2 on page 446, *ante*.

[Ben. Act XV]

(Part III.—Chapter X.—Bustees.—Secs. 343, 344.)

Owner of land in bustee to maintain certain conveniences on his land.

¹343. (1) The owner of any land in a *bustee* for which a standard plan has been approved under this chapter shall maintain in proper order and repair to the satisfaction of the Commissioners, such streets, passages, drains, common bathing arrangements, common privy accommodation, means of lighting, means of water-supply and other works on such land as may be shown in the plan.

(2) The Commissioners may, at any time, cause a written notice to be served upon such owner requiring him so to maintain such streets, passages, drains, common bathing arrangements, common privy accommodation, means of lighting, means of water-supply and other works :

Provided that any convenience made by the owner of a hut for his own use shall, subject to such notice as aforesaid, be maintained by him and not by the owner of the *bustee*.

Power to owner to take land out of the category of *bustee* in certain cases.

¹344. (1) The owner of any land included in a *bustee* and forming a separate holding may, at any time, whether or not a standard plan has been prepared for the *bustee*, notify the Commissioners in writing that he intends to remove all the huts standing on such land.

(2) The receipt of any such notice shall not debar the Commissioners from approving a standard plan of such *bustee*.

(3) From the date of such notice no application shall be entertained for erecting on such land any hut or adding to any hut standing thereon.

(4) Such owner shall, within six months after the date of such notice, or within such further time as the Commissioners at a meeting may from time to time allow, remove all huts standing on such land ; and if he does not do so, the notice shall be deemed to be cancelled.

(5) When all such huts have been so removed, such land shall according to its situation either—

- (i) be altogether excluded from the limits of the *bustee*, or
- (ii) be shown, in a standard plan approved for the *bustee* under this chapter, as not being a part of such *bustee* :

Provided that if, in the standard plan any street or passage is shown on such land, the provisions of sections 341 and 343 shall, with all necessary modifications, be deemed to apply to such street or passage, unless the Commissioners at a meeting otherwise direct.

(6) If after all the huts have been removed under sub-section (4) any application is received for erecting any hut on such land, the Commissioners may, by written notice, require the owner of the land to carry out such improvements included in the standard plan as they may think fit.

of 1932.]

(Part III.—Chapter X.—Bustees.—Sec. 345.)

(7) When all the huts standing on any land within a *bustee* have been removed under sub-section (4), the Commissioners at a meeting may either—

- (a) cancel the standard plan (if any), already approved under this chapter, for such *bustee*, or
- (b) modify such plan, after hearing the objections (if any) of any owner of land included in such *bustee*.

(8) When any land, formerly included in a *bustee*, ceases to be so included, and where any street or passage was shown on such land in the standard plan, and where, on such land ceasing to be so included, the Commissioners at a meeting do not consider it to be practicable, or do not consider it to be expedient to change the alignment of such street they shall, in applying the proviso to sub-section (5) to such street, compensate the owner of such land for any area that is included in such street, which is in excess of one-seventh of the entire area of the land, which ceases to be included in the *bustee*.

¹345. (1) In any *bustee* in respect of which a standard plan has not been prepared, or in any area in which it appears to the Commissioners that huts are likely to be erected, the Commissioners at a meeting may, after hearing the objections, if any, of any owner of land in such *bustee*, prescribe alignments, not more than sixteen feet in width, for such private streets as they may think fit.

Power to Commissioners to prescribe alignments for *bustee* streets.

(2) When the land within such *bustee* or area is owned by more owners than one, each owning one or more separate plots of such land, such alignments shall as far as practicable be so prescribed as not to occupy, within any such plot, more than one-fifth of the area thereof, and shall not ordinarily be less than two hundred and fifty feet apart.

(3) If, in any such plot, more than one-fifth of the area thereof is occupied by such alignments, the Commissioners shall pay reasonable compensation to the owner of the plot :

Provided that no such compensation shall be paid in respect of any such plot as long as any hut or other structure other than a masonry building is left standing in the plot within any such alignment.

(4) No hut or portion of a hut shall be erected within any alignment prescribed under sub-section (1).

(5) The provisions of section 341 shall, with all necessary modifications be deemed to apply to every street, the alignment for which has been prescribed under this section.

¹See foot-note 2 on page 446, *ante*.

(Part III.—Chapter X.—Bustees.—Chapter XI.—Purity of water-supply.—Secs. 346—348.)

Power to
Commissioners to
require
removal of
existing
huts
within
street or
hut align-
ment in
bustee.

¹346. (1) In any bustee, at any time after the expiration of seven years from the time when any alignment has been prescribed for a street or for huts under section 345, the Commissioners at a meeting may, by written notice, require the owner of the land or the owners or occupiers of existing huts to remove such huts or portions thereof as fall—

- (i) within any such prescribed street alignment, or
- (ii) within six feet on either side of any such prescribed hut alignment,

as the case may be.

(2) When a hut has been removed under the provisions of sub-section (1), the Commissioners at a meeting shall pay to the owner thereof such compensation as they may consider to be reasonable, but such compensation shall in no case exceed the value of the hut less the value of the materials thereof.

Power to
Commissioners to
require
space to
be kept
between
masonry
building
in bustees
and centre
line of
bustee
street.

¹347. Any person who erects a masonry building—

- (a) in any bustee in respect of which a standard plan has been approved under section 337, or
- (b) in any bustee or area in respect of which alignments for streets have been prescribed under section 345,

shall, if so required by written notice issued by the Commissioners at a meeting, leave a clear space of fifteen feet between the centre line of any street or passage shown in such plan, or of any street, the alignment for which has been so prescribed, as the case may be, and the nearest part of such building.

CHAPTER XI.

PURITY OF WATER-SUPPLY.

Power to
set apart
wells,
tanks,
etc., for
drinking,
culinary,
bathing
and
washing
purposes.

348. The Commissioners may, by order published at such places as they think fit, set apart any tank, well, spring or water-course or any part thereof, vested in or under their control, or with the consent of the owner thereof, any tank, well, spring or water-course or part thereof subject to any rights which the owner may retain with the consent of the Commissioners for any of the following purposes, namely—

- (a) for the supply of water for drinking or for culinary purposes or for both, or
- (b) for the purpose of bathing, or
- (c) for washing animals or clothes, or
- (d) for any other purpose connected with the health, cleanliness or comfort of the inhabitants,

and may by like order prohibit bathing or the washing of animals or clothes or other things at any public place not set apart for

¹See foot-note 2 on page 446, ante.

of 1932.]

*(Part III.—Chapter XI.—Purity of water-supply.—
Secs. 349—352.)*

that purpose, or at any time or by a sex other than that specified in the order and may in like manner prohibit any other act by which water in public places may be rendered foul or unfit for use or which causes or is likely to cause inconvenience or annoyance to persons lawfully using such places.

349. The Commissioners may, by notice, require the owner of, or the person having control over, a private tank, well, spring or water-course or other place, the water of which is used for drinking or culinary purposes, to clean the same from time to time of silt, refuse or decaying vegetation, and may also require him to protect the same from pollution in such manner as to the Commissioners may seem fit, and in the case of a well to repair the same.

Power to require cleansing of sources of water for drinking or culinary purposes.

350. If the Commissioners at a meeting after due inquiry are satisfied that the water of any tank, well, spring or water-course, or part thereof or other place, used or likely to be used for drinking or culinary purposes, is, if so used, liable to engender or cause the spread of disease, and that owing to its situation or other cause such place cannot effectively be protected from pollution, or if the owner of, or person having control over, any such place refuses or neglects to comply with a requisition of the Commissioners under section 349, the Commissioners may—

Power to prohibit use of polluted water for drinking or culinary purposes.

- (a) by public notice prohibit the use or removal of water from such place for drinking or culinary purposes during a period to be specified in the notice and take such steps as they may consider necessary to prevent the use or removal of water for such purposes, or
- (b) in the case of a private well, require the owner of, or person having control over it to close it permanently or to fill it up with suitable material.

351. The Commissioners or any person authorised by them in this behalf may, at all reasonable times, inspect and disinfect any tank, well, spring or water-course or other place from which water is, or is likely to be, taken for drinking or culinary purposes.

Power to inspect and disinfect sources of water used for drinking or culinary purposes.

352. (1) The ¹[State Government] may make rules to provide for the proper analysis of the water of any water-works, tanks, well, spring or water-course or other place, used or likely to be used for drinking or culinary purposes in any municipality and in particular may—

Analysis of water for drinking or culinary purposes.

- (a) require the Commissioners to make over at such times and places and to such person or persons as the

¹See foot-note 2 on page 297 ante.

[Ben. Act XV]

*(Part III.—Chapter XI.—Purity of water-supply.—
Sec. 353.)*

Director of Public Health may appoint in this behalf, samples of water taken under such precautions and in such manner as the Director of Public Health may prescribe,

- (i) from the water-works of the Commissioners where any exist, or
 - (ii) where no water-works exist or where any water used for domestic or culinary purposes is drawn from any tank, well, spring or water-course or other source of supply than from any such tank, well, spring or water-course or other source of supply or as the Director of Public Health may at any time specify in this behalf ;
- (b) prescribe a scale of fees to be paid by the Commissioners for the analysis which shall be made of the aforementioned samples under the direction of the Director of Public Health.

(2) Where any tank, well, spring or water-course or other source of supply is not within the control of the Commissioners, they shall nevertheless have full power to take water in such manner as they may think proper from any of the above sources of supply for the purpose of furnishing samples to the Director of Public Health.

Applica-
tion for
analysis
by Public
Analyst of
water for
domestic
purposes.

353. On the representation of two qualified medical practitioners or ten or more persons to the Commissioners of any municipality within whose jurisdiction they reside, that within the municipality the water in any tank, well, spring or water-course, public or private, used or likely to be used for drinking or culinary purposes or for the manufacture of aerated or other drinks for human consumption is so polluted as to be injurious to health, the Commissioners shall forward a sample of such water to the Public Analyst for analysis at the cost of the Commissioners and if the Public Analyst certifies that such water, if used for drinking or culinary purposes, is liable to engender or cause the spread of disease, the Commissioners shall take measures to remedy the same or require the owner or person having control over such source of supply to take such measures for this purpose as to the Commissioners may seem fit, or if such source of supply cannot in their opinion effectively be protected from pollution, then the Commissioners shall make such order as they think proper and are empowered to make under this Act :

Provided that if the Commissioners are of opinion for reasons to be stated in writing that any representation made under this section is frivolous or vexatious, they may, before forwarding a sample of the water to the Public Analyst, require the persons making the representation to deposit the cost of the analysis, which shall be refunded in the event of the Public Analyst granting the certificate referred to in this section.

of 1932.]

(Part III.—Chapter XI.—Purity of water-supply.—Chapter XII
—Insanitary and Dangerous Property.—Secs. 354—356.)

Ben. Act
VI of
1919.

354. Where the Commissioners have appointed a person to be the Public Analyst for the area under their control under section 3 of the Bengal Food Adulteration Act, 1919, the ¹[State Government] may, with the consent of the Commissioners, direct that any analysis prescribed under sections 352 and 353 of this Act shall be made by such analyst on the payment of such fees by the Commissioners for whom the analysis may be made, as the ¹[State Government] may fix.

Fees for
analysis
of water.

By-laws relating to public water-supply, etc.

355. The Commissioners at a meeting may make by-laws regulating the use of, and the prevention of nuisances in regard to, the public water-supply, bathing and washing places, streams, channels, tanks and wells.

Power to
make
by-laws.

CHAPTER XII.

Insanitary and Dangerous Property.

356. (1) When—

- (a) any well, pool, ditch, tank, pond, pit or marshy or undrained ground, or
- (b) any cistern, reservoir or water-butt or any other receptacle or place where water is stored or accumulated, or
- (c) any waste or stagnant water, whether within any private enclosure or not,

Power to
direct the
filling up,
etc., of
unwhole-
some
wells,
pools, etc.

appears to the Commissioners to be or to be likely to become injurious to health or offensive to the neighbourhood, they may, by written notice, require the owner or occupier of the land or building to which such well, cistern, reservoir, water-butt or receptacle pertains, or of the land, as the case may be, in which such pool, ditch, tank, pond, pit, ground, place or water is situated, at the expense of such owner or occupier—

- (i) to cleanse the same, or
- (ii) to re-excavate the same, or
- (iii) to fill up the same with suitable material, or
- (iv) to drain off or to remove water from the same,

or to take such other order therewith as the Commissioners may deem necessary within such period as may be specified in the notice.

(2) If the Commissioners, in exercise of the powers conferred under this Act, execute any work referred to in a notice issued

[Ben. Act XV

(Part III.—Chapter XII.—Insanitary and Dangerous Property.
—Secs. 357—359.)

under sub-section (1), and if the person liable to pay the expenses of such work fails to pay the same, the Commissioners may, until such expenses are paid,—

(i) take over and let out on lease any part of the land used in connection with the said well, pool, ditch, tank, pond, pit, cistern, reservoir, water-butt, receptacle, place of water, or any part of the said ground, as the case may be, or

(ii) retain possession of the same, or the site thereof, and utilize it for public purposes.

(3) If the said expenses be paid by an occupier of land, he may in the absence of any agreement to the contrary deduct the same from any rent due to the owner of the land.

Power to
Commissioners to
regulate
excavations.

357. (1) No person shall, within a municipality without the special permission of the Commissioners, make an excavation for the purpose of taking earth therefrom, or for the making of bricks or for the purposes of storing rubbish or offensive matter therein or dig any cess-pools, tanks, ponds, wells or pits :

Provided that the Commissioners at a meeting may make such general exemptions from the provisions of this section as may appear to them to be necessary for the public convenience.

(2) If any such excavation, cess-pool, tank, pond, well or pit is made or dug without the permission required under sub-section (1), the Commissioners may, whether the offender be prosecuted or not, by written notice require the owner or occupier of the land on which the same is made or dug to fill up the same with earth or other material approved by the Commissioners within such time as may be specified in the notice.

Power to
extend
sections
356 and
357 beyond
municipal
limits.

358. The Commissioners of a municipality may in consultation with any adjacent local authority and subject to the approval of the ¹[State Government], extend the provisions of sections 356 and 357 to any area beyond the municipality and may make such provision as to costs for execution of any work in the area as may be agreed upon between the Commissioners and the local authority concerned.

Wells,
tanks, etc.,
to be
secured.

359. (1) If any well, tank or other excavation, whether on public or private ground, is, for want of sufficient repairs or protection, dangerous to passengers, the Commissioners shall forthwith cause a written notice to be served on the owner, if he be known and resident in the municipality, and also to be put on some conspicuous part of the premises or served on owners or occupiers (if any) of the land on which such tank, well or other excavation is situated requiring such owner or occupier forthwith properly to secure or protect such well, tank or other excavation.

(2) The Commissioners may also, if it appears to them to be necessary so to do, cause a proper hoarding or fence or other means of protection to be put up at the cost of the owner or occupier of such land for the safety of the public.

¹ See foot-note 2 on page 297, ante.

of 1932.]

(Part III.—Chapter XII.—Insanitary and Dangerous Property.—Sections 360—362.)

360. If the Commissioners at a meeting, after due inquiry, are satisfied that the cultivation of any description of crop, or the use of any kind of manure or the irrigation of land in any specified manner—

- (a) in any place within the limits of the municipality is injurious to the health of persons dwelling in the neighbourhood, or
- (b) in any place within or without the limits of the municipality, is likely to contaminate the water-supply of the municipality or otherwise render it unfit for drinking or culinary purposes,

Power to prohibit cultivation, use of manure or irrigation injurious to health and to remove growth of water-hyacinth and other noxious plants.

or that any person is permitting the growth within or without the limits of the municipality of water-hyacinth, or such other noxious plants as may be certified in this behalf by the ¹[State Government] as being a danger to the health of persons resident within the limits of the municipality or to navigation within those limits the ¹[State Government] may, on receipt of an application from the Commissioners, by public notice, prohibit the cultivation of such crop, the use of such manure, or the use of the method of irrigation so certified to be injurious, or impose such conditions with respect thereto as may prevent the injury or, in the case of water-hyacinth or such other noxious plant as may be in this behalf notified, may impose such regulations as may secure the removal of the same :

Provided that, if the act prohibited has been practised in the ordinary course of husbandry at any time during the five successive years last preceding the date of the prohibition, compensation shall be paid from the Municipal Fund to all persons interested therein for any damage caused to them by such prohibition.

361. The Commissioners may inspect any building or other premises for the purpose of ascertaining the sanitary condition thereof :

Power to inspect premises for sanitary purposes.

Provided that no such inspection shall be made at night except by an officer specially authorized by the Commissioners in this behalf without giving reasonable notice.

362. If it appears to the Commissioners necessary for sanitary reasons so to do, they may, by written notice, require the owner or occupier of any building inspected under section 361 to cause the same or any portion thereof to be lime-washed or otherwise cleansed either externally or internally or both externally and internally.

Power to require cleansing and lime-washing of building.

¹See foot-note 2 on page 297, *ante*.

[Ben. Act XV]

(Part III.—Chapter XII.—Insanitary and Dangerous Property.
—Sections 363—365.)

Power to
require
owners to
clear
noxious
vegetation
and to
improve
bad
drainage.

363. Whenever any land, being private property or within any private enclosure, appears to the Commissioners, by reason of thick vegetation, under-growth or jungle, or inequalities of surface or by want of drainage, to be in a state injurious to health or offensive to the neighbourhood, the Commissioners ¹* * * may require the owners or occupiers or the owners and occupiers, of such land, within fifteen days to clear and remove such vegetation, undergrowth or jungle, or dress such surface or drain such land :

Provided that if for the purpose of effecting any drainage under this section it shall be necessary to acquire any land not being the property of the person who is required to drain his land, or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation.

Power to
demolish,
repair or
secure wall,
building
or fixture
in a
ruinous
state, etc.

364. (1) If any wall or building, or anything affixed thereto, be deemed by the Commissioners to be in a ruinous state, or likely to fall, or to be in any way dangerous, they shall forthwith cause a written notice to be served on the owner, if he be known and resident in the municipality, and also to be put on some conspicuous part of the wall or building or served on the occupier (if any) of the building requiring such owner or occupier forthwith to demolish, repair or secure such wall, building or thing as the case may require.

(2) The Commissioners may also, if it appears to them to be necessary so to do, cause a proper hoarding or fence or other means of protection to be put up at the expense of the owner of such wall or building for the safety of the public or the inmates thereof; and may also, after giving them such notice as the Commissioners may think necessary, require the inmates of the building to vacate it.

(3) So far as they are in force in the municipality the provisions of this Act and of Schedule VI² and of any rules or by-laws made under this Act relating to buildings shall apply to any work done in that municipality in pursuance, or in consequence, of a notice issued under sub-section (1).

365. (1) Whenever the Commissioners at a meeting consider—

Power to
prevent
public
danger,
etc., from
insecure or
insanitary
buildings.

(a) that any building, is by reason of its having no plinth or having a plinth of insufficient height, or by reason of the want of proper drainage or ventilation or by reason of the impracticability of cleansing, attended with risk to the health of the occupiers thereof or to the inhabitants of the neighbourhood or is, for any reason, likely to endanger the public health, or

¹The words "at a meeting" were omitted by sec. 45 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

of 1932.]

*(Part III.—Chapter XII.—Insanitary and Dangerous Property.
—Section 366.)*

- (b) that a block or group of buildings is, for any of the said reasons, or by reason of the manner in which the buildings are crowded together, attended with such risk as aforesaid,—

they may by notice require the owners or occupiers of such building or buildings or portions thereof, or, at the option of the Commissioners, the owners of the land occupied by such building or buildings or portions thereof, to execute such works or to take such measures as they may deem necessary for the prevention of such risk.

(2) No person shall be entitled to compensation for damages sustained by reason of any action taken under or in pursuance of this section, save when the building is demolished to the extent of more than half of its cubical contents in pursuance of an order made thereunder, in which case the Commissioners shall pay reasonable compensation to the owners thereof.

(3) When any building is entirely demolished under this section and the demolition thereof adds to the value of other buildings in the immediate vicinity, the owners of such other buildings shall be bound to contribute towards the compensation payable to the owner of the first named building in proportion to the increased value accruing to their own premises.

The amount of such contribution and the proportions in which it is to be divided among the owners of such other buildings shall be determined by the Commissioners at a meeting and shall be recoverable as though it were a rate under the provisions of Chapter V.

(4) When any building though not entirely demolished under this section is demolished to the extent of more than half of its cubical contents, allowance shall be made in determining the compensation for the benefit accruing to the premises from the improvement thereof.

(5) Any person aggrieved by an order made by the Commissioners under this section may appeal to the ¹[State Government] within thirty days and the decision of the ¹[State Government] given after such inquiry as it thinks fit shall be final.

(6) The order made by the Commissioners under this section shall not take effect until the expiry of thirty days, or, if an appeal has been lodged until the decision of the ¹[State Government] is given under sub-section (5).

366. (1) If, for any reason, any building or portion of a building intended for, or used as, a dwelling place appears to the Commissioners at a meeting to be unfit for human habitation, they may require the owner or occupier of such building to make such alterations as they think necessary in the building in order to make it fit for human habitation, if they consider that this can

Procedure
in case of
buildings
deemed
unfit for
human
habitation.

¹ See foot-note 2 on page 297, ante.

*(Part III.—Chapter XII.—Insanitary and Dangerous Property.
—Sec. 367.)*

be done, but whether they think it can be made fit for human habitation or not, they may, in either case, after giving the owner or occupier an opportunity of being heard, apply to a Magistrate to prohibit the further use of such building or portion thereof for such purpose ;

and the Magistrate shall serve a notice on such owner or occupier so as to give him an opportunity of being heard in the Court, and after such inquiry as he thinks fit to make, may, by written order, prohibit the further use thereof, or may pass such other order as he may deem just and proper.

(2) When any such prohibition has been made, the Commissioners may—

(i) inspect such building by day or by night, and

(ii) take such order as may be necessary to preclude the further use of the same, or of the portion specified in the prohibition as a human habitation.

(3) When any such prohibition has been made, no owner or occupier of such building shall use, or suffer the same, or the portion specified in the prohibition, to be used for human habitation until—

(a) the Chairman certifies in writing that the causes rendering it unfit for human habitation have been removed to his satisfaction, or

(b) the Magistrate, by written order, withdraws the prohibition.

(4) The Commissioners shall prepare and maintain at the municipal office a list of buildings in respect of which the Magistrate has passed an order under sub-section (1), and such list shall contain such particulars as to the action taken by the Commissioners or the owner in pursuance of such order or otherwise, as the Chairman shall think fit and shall be open to inspection by the public free of charge.

367. (1) When a Magistrate has prohibited the use of a building for human habitation under section 366 and such prohibition has been in force for three months, the Commissioners at a meeting shall take into consideration the question of the demolition of such building,

and shall give notice of the time (being some time not less than one month after the service of the notice) and place at which such question will be considered to the owner, and to the occupier (if any) of the building,

and the said owner and occupier shall be entitled to be heard when the question is so taken into consideration.

(2) If, upon such consideration, the Commissioners are of opinion that the building has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit, they shall cause a written notice to be served on the said owner and occupier and also to be put on some conspicuous part of such building, requiring such owner and

Power to
Commissioners to
require
demolition
of building
unfit for
human
habitation.

of 1932.]

*(Part III.—Chapter XII.—Insanitary and Dangerous Property.—
Secs. 368, 369.)*

occupier to demolish the building or any portion thereof as the case may be or to execute such work as in the opinion of the Commissioners at a meeting may be necessary to render the building fit for human habitation.

(3) If such owner or occupier undertakes to execute with due diligence the work necessary to render the building fit for human habitation, and the Commissioners consider that it can be so rendered fit for human habitation, the Commissioners may postpone the operation of the said notice for such time as they think sufficient for the purpose of giving the said owner or occupier an opportunity of executing the necessary work.

368. (1) If it appears to the Commissioners that any dwelling-house or other building which is used as a dwelling-place, or any room in such dwelling-house or building, is so overcrowded as to endanger the health of the inmates thereof, they may apply to a Magistrate to abate such overcrowding ; and the Magistrate, after such inquiry as he thinks fit to make, may, by written order, require the owner of the building, or room, within a reasonable time not exceeding four weeks to be specified in the said order, to abate such overcrowding by reducing the number of lodgers, tenants, or other inmates of the building or room, or may pass such other order as he may deem just and proper.

Abatement
of over-
crowding
in dwell-
ing house
or dwell-
ing-place.

(2) The Commissioners at a meeting may, by written order, declare what amount of superficial and cubic space shall be deemed for the purpose of sub-section (1) to be necessary for each occupant of a building or room.

(3) If any building or room referred to in sub-section (1) has been sublet, the landlord of the lodgers, tenants, or other actual inmates of the same shall, for the purposes of this section, be deemed to be the owner of the building or room.

(4) Notwithstanding anything contained in any law or in any contract to the contrary it shall be incumbent on every tenant, lodger or other inmate of a building or room to vacate on being required by the owner so to do in pursuance of any requisition made under sub-section (1).

(5) Nothing in sub-section (1) shall apply to a dwelling-house or building used as a dwelling-place or a room in such dwelling-house or building which is overcrowded by the members of family of the owner thereof.

369. Notwithstanding anything contained in this Act, where it appears to the Commissioners that immediate action is necessary for the purpose of preventing imminent danger to person or property from any building, wall, bank, or other structure or anything affixed thereto or to remove any tree or other thing, which appears to them to be a source of imminent danger to person or property the Commissioners may take such immediate action themselves ; and in such a case, it shall not be necessary for the Commissioners to give notice, if it appears to them that the object of taking such immediate action would be defeated by the delay incurred in giving notice.

Prevention
of danger
from
ruinous
buildings,
etc.

[Ben. Act XV

(Part III.—Chapter XIII.—Offensive and Dangerous Trades, Occupations or Processes.—Sec. 370.)

CHAPTER XIII.

OFFENSIVE AND DANGEROUS TRADES, OCCUPATIONS OR PROCESSES.

Power to prohibit certain offensive and dangerous trades without license.

¹370. (1) No person shall use or permit to be used any place within such local limits as may be fixed by the Commissioners at a meeting without a license from the Commissioners (which shall be renewable annually) for any of the following purposes, namely :—

(i) for the slaughter of animals or for the skinning or disembowelling of animals for purposes other than human consumption :

Provided that this clause shall not apply to slaughter of animal for a *bona fide* religious purpose or on a ceremonial occasion ; or

(ii) for storing hides, fish, horns or skins ; or

(iii) for boiling or storing offal, blood, bones or rags ; or

(iv) for melting tallow ; or

(v) for tanning or for the manufacture of leather or leather goods ; or

(vi) for oil-boiling ; or

(vii) for soap-making ; or

(viii) for dyeing ; or

(ix) for burning or baking bricks, tiles, pottery or lime, whether for trade or private purposes ; or

(x) as a depot for trade in coal or coke ; or

(xi) for storing kerosine, petroleum, naphtha, or any inflammable oil or spirit ; or

(xii) for trading in, or storing for other than his own domestic use, hay, straw, wood, thatching grass, jute or other dangerously inflammable material :

Provided that this clause shall not apply to the stock of any such article held by and intended for use in the business

¹This section shall, on the application of the West Bengal Fire Services Act, 1950 (West Bengal Act XVIII of 1950), to Calcutta or any other municipality, be deemed to be repealed in so far as it entitles the Corporation of Calcutta or the Commissioners of the Municipality to levy fees in respect of premises licensed for storing any articles referred to in clause (1) of section 2 of the said Act, *vide* sec. 38 of the West Bengal Fire Services Act, 1950 (West Ben. Act XVIII of 1950). [This Act came into force in Calcutta and the municipalities of (1) Garden Reach, (2) Budge Budge, (3) Barrackpore, (4) North Barrackpore, (5) Bhatpara, (6) Naihati, (7) Kanchrapara, (8) Panihati, (9) Halisahar, (10) Garulla, (11) Titagarh, (12) Khardah, (13) Kamarhati, (14) North Dum Dum, (15) South Dum Dum, (16) Dum Dum, (17) Baranagar, (18) Tollygunge, (19) South Suburban, (20) Howrah, (21) Bally, (22) Uttarpara, (23) Konnagar, (24) Serampore, (25) Hooghly-Chinsura, (26) Bhadreswar, (27) Bansberia, (28) Champdani, (29) Baldiyabati, (30) Rishra, (31) Kotrung, (32) Ranigunj, (33) Asansol, (34) Burdwan, (35) Jalpaiguri, and (36) Siliguri, on the 18th day of April, 1950, *vide* notification No. L.S.-G. 1A-1/50, dated 18th April, 1950, published in Part I, page 493 of the *Calcutta Gazette, Extraordinary*, of the 18th April, 1950.]

of 1932.]

(Part III.—Chapter XIII.—Offensive and Dangerous Trades, Occupations or Processes.—Secs. 371, 372.)

XXV of
1934.

- of, any mill, factory, shipyard, engineering or other manufacturing firm ¹[to which the provisions of the Indian Factories Act, 1934,² apply and which is] situated within the municipality; or
- (xiii) for any manufacture, process or business from which the offensive or unwholesome smells or offensive noises may arise; or
- (xiv) for any trade, process or business which the ³[State Government] may, by notification, declare to be a trade, process or business which requires to be regulated under the provisions of this chapter.

(2) A license for any of the purposes mentioned in sub-section (1) shall not be withheld unless the Commissioners at a meeting have reasons to believe that the business which it is intended to establish or maintain would be the cause of annoyance, offence or danger to persons residing in or frequenting the immediate neighbourhood or that the area should be for general reasons kept clear of the establishment of such business.

(3) The Commissioners at a meeting may, in accordance with a scale of fees to be prepared by them from time to time and approved by the ⁴[State Government], levy a fee in respect of any such license and the renewal thereof, and may impose such conditions as to supervision, inspection, conservancy and other matters upon the grant of any such license as they may think necessary.

(4) The grant of a license for the purposes mentioned in clause (xi) of sub-section (1) shall be consistent with the provisions of the Indian Petroleum Act, 1899,⁴ and no such license shall be granted unless the said provisions have been complied with by the applicant for the license.

VIII of
1899.

371. If it appears to the Commissioners at a meeting that at any place licensed under section 370 the business is being carried on in contravention of the terms of the license in such a way as to be a cause of annoyance or offence to persons residing in or frequenting the immediate neighbourhood or of danger to health, they may, notwithstanding anything contained in the said section, after giving one month's notice to the licensee, cancel his license.

Power to
order the
carrying
on of dan-
gerous and
offensive
trades to
be dis-
continued.

372. (1) No dairyman, milkman, cartman, livery stable-keeper or keeper of hackney carriages ⁵[or other person] shall keep horses, ponies, cattle or other four-footed animals for the purposes of trade or business except in a place licensed by the Commissioners :

Licensing
of places
for
keeping
horses and
cattle.

¹These words and figures were inserted by sec. 35 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²The Factories Act, 1934 (XXV of 1934) was repealed and re-enacted by the Factories Act, 1948 (LXIII of 1948).

³See foot-note 2 on page 297, *ante*.

⁴The Indian Petroleum Act, 1899 (VIII of 1899) was repealed and re-enacted by the Petroleum Act, 1934 (XXX of 1934).

⁵These words were inserted by sec. 46 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

[Ben. Act XV]

(Part III.—Chapter XIII.—Offensive and Dangerous Trades, Occupations or Processes.—Secs. 373—375.)

Provided that this sub-section shall not apply to a cartman who keeps not more than four animals for the purposes of using them with his own cart.

(2) Licenses granted under sub-section (1) shall be subject to such conditions as the Commissioners at a meeting may impose in respect of the site, construction, materials and dimensions of any structure erected for keeping horses, ponies, cattle or other four-footed animals, and in respect of the fencing, drainage, cleansing and in any other matter relating to the regulation of such places as they may think necessary.

Commis-
sioners
may
provide
public
stables.

373. (1) The Commissioners at a meeting may provide public stables for the accommodation of horses and cattle and may direct that, within such limits as they shall at a meeting determine, no person shall keep horses or cattle, exceeding ten in number, for the purpose of trade or business except in such public stables, or in places licensed under section 372.

(2) The Commissioners at a meeting may charge such reasonable fees as they shall think fit for the use of such public stables.

(3) The Commissioners at a meeting may license places for such purpose, and may levy a fee not exceeding one rupee on the issue and renewal of any such license. Such license shall be renewed in the first and seventh months of each year.

(4) It shall be in the discretion of the Commissioners at a meeting to grant any such license subject to such conditions as they may think fit.

Conditions
for keeping
pigs, sheep
and goats.

374. (1) Within such limits as the Commissioners at a meeting may direct, no person shall keep pigs or in any place more than twenty sheep or twenty goats without a license from the Commissioners, which shall be renewable annually.

(2) The Commissioners at a meeting may charge an annual fee not exceeding two rupees for such license, and in respect of such license may impose such conditions as to fencing, drainage, paving, cleansing and other matters for the regulation of such places as they may think necessary.

Power to
make by-
laws
regulating
places used
for offen-
sive
trades, etc.

375. The Commissioners at a meeting may make by-laws—

(a) providing for the inspection and regulation of the conduct of business in a place used for any of the purposes mentioned in section 370, so as to secure cleanliness therein, or to minimize any injurious, offensive or dangerous effect arising or likely to arise therefrom ;

(b) regulating or prohibiting for the prevention of any public annoyance or inconvenience or for the purpose of preventing danger to public health, the stalling of elephants, horses, camels, cattle, donkeys, sheep or goats ;

of 1932.]

(Part III.—Chapter XIV.—*Restraint of Infection.*—Secs. 376—378.)

- (c) regulating or prohibiting for the prevention of any public annoyance or inconvenience or for the purpose of preventing danger to the public health the place and manner of stalling pigs ; and
- (d) to prevent the straying of pigs.

CHAPTER XIV.

RESTRAINT OF INFECTION.

376. If the Commissioners have reason to believe that any dangerous disease has appeared or is likely to appear in epidemic form within the municipality, they shall promptly investigate the matter, secure the prompt and thorough isolation of those sick or infected with such disease, so long as there is danger of their communicating the disease to other persons ; see that no person suffers for lack of nurses or other necessities because of isolation for the public good ; give public notice of infected places by placard on the premises and otherwise, if necessary, promptly notify head teachers of schools concerning families any of the members of which are suffering from dangerous diseases ; supervise funerals of persons dead from such diseases, disinfect rooms, clothing and premises, and all articles likely to be infected ; and generally so exercise the powers conferred on them by this Act as to guard and protect the public health and do such things as may be necessary to check and prevent the spread of the disease.

Duty of Commissioners in case of epidemic.

377. A medical practitioner or a person practising the medical profession, and in the course of such practice becoming cognizant of the existence of any dangerous disease in any building other than a public hospital ; or if no medical practitioner or person practising the medical profession is so cognizant, the owner or occupier of such building cognizant of the existence of any such disease therein ; or if the owner or occupier is not so cognizant the person in charge of, or in attendance on, any person, suffering from any such disease in such building, cognizant of the existence of the disease therein, shall give true and correct information to such officer as the Commissioners may direct respecting the existence of such disease :

Information to be given of dangerous disease.

Provided that a person not required to give information in the first instance, but only in default of some other person, shall not be punishable if it be shown that he had reasonable cause to suppose that the information has been, or would be duly given.

378. (1) When, in the opinion of any registered medical practitioner, any person is suffering in any municipality from any dangerous disease and is also without proper lodging or accommodation or is lodged in such manner that he cannot be effectually isolated so as to prevent infection or contagion, and the said practitioner considers that such person should be removed to a hospital or place at which patients suffering from such disease are received for medical treatment, he may send a certificate to that effect to the Commissioners.

Power to Commissioners to remove patient to hospital in certain cases.

[Ben. Act XV]

(Part III.—Chapter XIV.—Restraint of Infection.—Sec. 379.)

(2) On receipt of any such certificate, the Commissioners may direct or cause the removal of such person to such hospital or place :

Provided that all costs incurred for the removal and in the treatment of any such patient may be borne by the Commissioners :

Provided also that, if any such person is a female, she shall not be removed to any such hospital or place unless the same has accommodation for females, and set apart from the portion assigned to males.

(3) The person (if any) who has charge of a person, in respect of whom an order is made under sub-section (2), shall obey such order.

(4) If any female who, according to the custom of the country, does not appear in public, be removed to any hospital or place under sub-section (2)—

(a) the removal shall be effected in such a way as to preserve her privacy ;

(b) special accommodation suited to such custom shall be provided for her in such hospital or place ;

(c) one female relative or attendant shall be allowed to remain with her.

(5) The Commissioners at a meeting may provide nurses for attendance on patients suffering from any dangerous disease in the municipality who, owing to want of hospital accommodation or danger of infection or contagion cannot be removed to hospital in cases where removal to the hospital is likely to endanger the patient's health ; and may charge reasonable fees for the services of and fix the qualifications, duties and salaries of such nurses.

379. (1) If the Commissioners are of opinion—

(a) that any building or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or

(b) that the cleansing, limewashing or disinfecting, as the case may be, of any building or any part of a building or of any tank or pool or well adjacent to a building, or that the cleansing, disinfection, purification or destruction of any article therein which is likely to retain infection or by reason of its filthy condition likely to cause injury to the health of any person, would tend to check or prevent the spread of any dangerous disease,

they may cause such building or part thereof to be cleansed, limewashed or disinfected or such tank, pool, well or article to be cleansed, disinfected or purified or such articles to be destroyed and may, by written notice, require the occupier of such building or any part thereof to vacate the same for such time as may be prescribed in such notice.

Power to
cleanse or
disinfect
buildings,
tanks, etc.

of 1932.]

*(Part III.—Chapter XIV.—Restraint of Infection.—
Secs. 380, 381.)*

(2) The cost of such cleansing or disinfecting shall be paid by the occupier of the building, or in the case of any tank, pool or well not let out with a building by the owner or occupier of the holding in which such tank, pool or well is situated according as the Commissioners at a meeting may determine :

Provided that—

- (a) if, in the opinion of the Commissioners at a meeting, the occupier is from poverty unable to pay the said cost, the Commissioners shall direct payment thereof to be made from the Municipal Fund, and
- (b) the Commissioners shall provide temporary shelter or house accommodation for the members of any family in which any dangerous disease has appeared who have been compelled to leave their dwellings for the purpose of enabling such dwellings to be disinfected for any part of a night.

(3) Where a person sustains damage in consequence of the destruction of any article under this section, and the condition of such article is not attributable to the act or default of such person, the Commissioners at a meeting shall make reasonable compensation to that person.

380. (1) If the Commissioners are of opinion that the destruction of any hut or shed is necessary to prevent the spread of any dangerous disease, they may, after giving to the owner or occupier of such hut or shed such previous notice of their intention as may in the circumstances of the case appear to them to be reasonable, take measures for having such hut or shed and all the materials thereof destroyed.

Power to Commissioners to destroy huts and sheds.

(2) The Commissioners at a meeting shall make such compensation not exceeding the value of the hut as they think proper to any person who sustains loss by the destruction of any such hut or shed, but except as so allowed by the Commissioners, no claim for compensation shall lie for any loss or damage caused by any exercise of the power conferred by sub-section (1).

381. No person shall knowingly let a dwelling-house or other building or part of a dwelling-house or building in which any person has been suffering from any dangerous disease—

Infected building not to be let.

- (a) unless such house, building or part thereof and all articles therein liable to retain infection have been disinfected and the Commissioners have granted a certificate to that effect, and
- (b) until a date specified in such certificate as that on which the house, building or part may be occupied and the articles therein used without causing risk of infection or contagion.

*(Part III.—Chapter XIV.—Restraint of Infection.—
Secs. 382—385.)*

For the purposes of this section a hotel or lodging house-keeper shall be deemed to let part of his hotel or lodging house to any person accommodated therein.

Provision
of places
and appli-
ances for
disinfect-
tion.

382. (1) The Commissioners at a meeting may provide proper places, with all necessary attendants and apparatus, for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection or contagion.

(2) The Commissioners may—

- (a) cause conveyances, clothing or other articles brought for disinfection to be disinfected free of charge or subject to such charges as may be approved by them ; and
- (b) direct any clothing, bedding or other articles likely to retain infection to be disinfected or destroyed and shall give compensation for any article destroyed under this clause.

Provision
of places
for disin-
fection or
washing of
infected
articles.

383. The Commissioners at a meeting may from time to time, by public notice, appoint a place or places at which conveyances, clothing, bedding or other articles which have been exposed to infection or contagion from any dangerous disease, may be washed, and no person shall wash or cause to be washed any such article at any place not so appointed, unless the same has been disinfected to the satisfaction of the Health Officer or Sanitary Inspector or of a registered medical practitioner.

Acts done
by persons
suffering
from cer-
tain

384. No person suffering from any disease notified by the ¹[State Government] in this behalf shall—

- (a) make or offer for sale any article of food for human consumption or any medicine or drug ; or
- (b) wilfully touch any such article, medicine or drug when exposed for sale by others ; or
- (c) take any part in the business of washing or carrying soiled clothes ; or
- (d) sell clothes or any other article for human wear or likely to come into contact with the human body without a written permission from the Health Officer, or, in case of a municipality ~~not~~ employing a Health Officer, from the Chairman.

Infected
articles not
to be
trans-
mitted
without
previous
disinfect-
tion.

385. (1) No person shall, without previous disinfection of the same, give, lend, sell, transmit or otherwise dispose of any article which he knows or has reason to know has been exposed to infection from any dangerous disease.

(2) Nothing in sub-section (1) shall apply to a person who transmits, with proper precautions, any such article for the purpose of having the same disinfected.

¹ See foot-note 2 on page 297, ante.

of 1932.]

(Part III.—Chapter XIV.—*Restraint of Infection.*—
Secs. 386, 387.)

386. (1) No person shall—

(a) while suffering from any dangerous disease wilfully expose himself in any street, public place, shop, *bazar* or any place used in common by persons other than members of the family or household to which such infected person belongs, or cause or suffer himself or any clothing, bedding or other article which has been exposed to infection or contagion to be carried in a public conveyance without previously notifying to the owner, driver or person in charge of such conveyance that he is so suffering or that such article is so infected, and without proper precautions against spreading the said disease, or

Exposure of person suffering from dangerous disease, and restrictions on carriage of patient or dead body in public conveyance.

(b) so carry or permit to be carried in a public conveyance the dead body of any person who has died from a dangerous disease or any clothing, bedding, or other article which has been exposed to infection or contagion or while in charge of any person suffering from any dangerous disease expose such sufferer in any such place as is referred to in clause (a) or carry such sufferer or permit him to be carried in a public conveyance without giving previous notice and taking the precautions referred to in that clause.

(2) Notwithstanding anything contained in any enactment relating to public conveyances for the time being in force, no owner or driver or person in charge of a public conveyance shall be bound to carry any person suffering as aforesaid or to carry any such dead body or any such infected clothing, bedding or other article as aforesaid, in such conveyance, unless payment or tender of sufficient compensation for the loss and expenses which he must incur in disinfecting such conveyance is first of all made to him.

387. (1) The owner, driver or person in charge of any public conveyance in which any person suffering from any dangerous disease or the dead body of any person who had died from such disease or any clothing, bedding or other article which has been exposed to infection or contagion has been carried shall immediately take the conveyance for disinfection to a place, if any, appointed under section 382 or section 383.

Disinfection of public conveyance after carriage of patient or dead body.

(2) The person in charge of such place shall forthwith intimate to the Commissioners the number of the conveyance and proceed to disinfect the conveyance.

(3) If no place has been appointed under ¹[section 382 or section 383], the Commissioners shall take such steps as they may think proper for disinfecting such conveyance.

(4) No such conveyance shall be used until the Commissioners have granted a certificate stating that it may be used without causing risk of infection or contagion.

¹These words and figures within square brackets were substituted for the words and figures "section 383 or section 384" by sec. 8 of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

[Ben. Act XV]

(Part III.—Chapter XIV.—Restraint of Infection.—
Secs. 388—391.)

Power to
provide
special
convey-
ances for
patients,
dead
bodies and
infected
articles.

388. (1) The Commissioners at a meeting may provide and maintain suitable conveyances for the free carriage of persons suffering from any dangerous disease or of the dead bodies of persons who have died from any such disease or for the removal of any clothing, bedding or other article which has been exposed to infection or contagion.

(2) When such conveyances have been provided, it shall not be lawful, without the sanction of the Commissioners, to carry any such person or dead body or any such clothing, bedding or other article in, or for any such person to cause himself to be carried in or for any person to cause any such dead body or any such clothing, bedding or other article to be carried in, any other public conveyance.

Power of
entry for
purposes
of prevent-
ing spread
of diseases.

389. The Commissioners may authorize any officer to enter, at any time between sunrise and sunset after three hours' notice, into any building or premises in which any dangerous disease is suspected to exist, for the purposes of inspecting such building or premises.

Power to
close
market,
etc.

390. (1) The Commissioners may, for a specified time, with a view to preventing the spread of any dangerous disease, order that any market, *sarai*, hotel or lodging-house within the municipality shall be closed, or forbid any person to attend any such market or to lodge in such *sarai*, hotel or lodging-house.

(2) Such order shall be publicly notified in such manner and at such places as the Commissioners shall direct, and notice thereof shall be served on the owner, occupier or farmer of the market or the keeper of the *sarai*, hotel or lodging-house.

(3) After complying with the notice, the owner, occupier or farmer of the market or the keeper of the *sarai*, hotel or lodging-house or any person interested may appeal to the Magistrate, or where the Magistrate is the Chairman of the municipality, to the Commissioner of the Division, if he considers the notice to be unreasonable, and the order of the Magistrate or of the Commissioner of the Division, as the case may be, shall be final.

Power to
close
school

391. (1) The Commissioners may, by notice, require the proprietor or person in charge of any school situated within the municipality for a specified time, with a view to preventing the spread of any dangerous disease or any danger to health likely to arise from the condition of the school, either to close the school or to exclude any scholars from attendance: and the proprietor or person in charge, as the case may be, shall forthwith comply with the notice.

(2) After complying with the notice, the proprietor or person in charge may appeal to the Magistrate or where the Magistrate is the Chairman of the municipality, to the Commissioner of the Division, if he considers the notice to be unreasonable, and the order of the Magistrate or the Commissioner of the Division, as the case may be, shall be final.

of 1932.]

(Part III.—Chapter XIV.—Restraint of Infection.—Sec. 392.)

392. The Commissioners at a meeting may make by-laws for the control, restraint and prevention of any dangerous disease and in particular, and without prejudice to the generality of the foregoing power, they may, and when required by the ¹[State Government] shall, make by-laws regarding the following matters :—

By-laws
for control,
etc., of
dangerous
disease.

- (a) the restraint, segregation, and isolation of persons suffering from any dangerous disease or likely to suffer from any such disease owing to exposure to infection or contagion ;
- (b) the removal, disinfection and destruction of personal effects, goods, houses and other property exposed to infection or contagion ;
- (c) the removal to hospital and the treatment of persons suffering from any dangerous disease or likely to suffer from any such disease owing to exposure to infection or contagion ;
- (d) the speedy burial or cremation of the bodies of persons who have died from any dangerous disease ;
- (e) house-to-house visiting and inspection ;
- (f) the promotion of cleanliness, ventilation and disinfection ;
- (g) the duties in respect of the prevention and notification of any dangerous disease, and in respect of persons suffering or suspected to be suffering therefrom, of the owners and occupiers of tea-gardens, factories, mills and workshops and of other persons employing in any one place not less than fifty persons ;
- (h) the duties of parents or guardians whose children being school children are suffering or have recently suffered from any dangerous disease or have been exposed to infection or contagion and the duties of persons in charge of schools in respect of such children.
- (i) the prevention of the spread from any animal, or the carcasses or product of any animal, to man, of rabies, glanders, anthrax, plague, tuberculosis, trichinosis or any other disease communicable to man by any animal or the carcass or product of any animal ;
- (j) the prevention of the spread and the eradication of malaria, the destruction of mosquitoes and the removal or abatement of conditions permitting or favouring the multiplication or prevalence of mosquitoes ;
- (k) the prevention of the spread of disease by flies or other insects and the destruction of such insects, and the removal or abatement of conditions permitting or favouring the prevalence or multiplication of such insects ;

¹See foot-note 2 on page 297, *ante*.

[Ben. Act XV

(Part III.—Chapter XIV.—*Restraint of Infection*.—Sec.—393.—
Chapter XV.—*Hospitals, Dispensaries, Child Welfare and School Hygiene*.—Sec. 394.)

- (l) the destruction of rodents and other vermin and the removal or abatement of conditions permitting or favouring the harbourage or multiplication thereof ;
- (m) the prevention of the spread of any dangerous disease by the carrying on of any business, trade or occupation ;
- (n) the regulation of rag-flock manufacture and the trade in rags and in bones and in second-hand clothing, bedding or any similar article and the requiring of any such article to be disinfected before its importation, removal, sale or exposure for sale, or use in any manufacturing process ; and
- (o) the disposal of any refuse, waste matter or other matter or thing, which has been contaminated with or exposed to infection or contagion.

Vaccination.

Health Officer to exercise powers of Superintendent of Vaccination.

393. A Health Officer appointed under section 66 or section 67 shall, within the municipality to which he is appointed, subject to such restrictions as the ¹[State Government] may impose, exercise the powers and perform the duties of a Superintendent of Vaccination.

CHAPTER XV.

Hospitals, Dispensaries, Child Welfare and School Hygiene.

Power to Commissioners to provide hospitals, dispensaries, etc., for the reception of the sick.

394. (1) The Commissioners at a meeting may provide hospitals, dispensaries or temporary places for the reception of the sick, and for that purpose may—

- (a) themselves build, alter, add to and maintain such hospitals, dispensaries or places of reception ; or
- (b) contract for the use of any such dispensary, hospital or place of reception, or of any part thereof ; or
- (c) enter into an agreement with any person or authority having the management of any hospital, within or without the municipality for the reception of the sick inhabitants of the municipality on payment of such annual or other sum as may be agreed on.

(2) The Commissioners of any municipality may combine with any other local authority in providing, maintaining or improving a common dispensary, hospital or place for the reception of the sick, provided that the scheme of management and the apportionment of the costs shall be approved by the ¹[State Government].

¹See foot-note 2 on page 297, *ante*.

of 1932.]

(Part III.—Chapter XV.—Hospitals, Dispensaries, Child Welfare and School Hygiene.—Secs. 395, 396.)

395. (1) The Commissioners at a meeting may provide—

- (a) midwives for attendance in maternity cases ; and
- (b) health visitors to visit and inspect any premises in the municipality and to give advice to expectant mothers on the management of their health and as to the proper nurture, care and management of young children, and the promotion of cleanliness.

Power of Commissioners to provide nurses, midwives, etc.

(2) The Commissioners at a meeting may charge such reasonable fees for the services of midwives provided by them as they think fit and may prescribe rules for the qualifications, duties and salaries of such midwives and of health visitors.

396. The ¹[State Government] may make rules—

- (a) requiring the father of a child if actually residing in the house where the child is born at the time of its birth, and any person in attendance upon the mother at the time of, or within twelve hours after, the birth, to give notice of the birth to the Health Officer or Sanitary Inspector in such manner as the Commissioners may prescribe ;
- (b) requiring the certification and registration of all midwives, *dhais*, or other women who habitually or for gain attend women in childbirth, prescribing minimum qualifications, examinations and courses of training for any such persons or classes of persons, regulating the issue of certificates, deciding the conditions under which such persons may be suspended from practice and their certificates cancelled, and regulating, supervising and restricting within due limits the practice of such persons, particularly in regard to such matters as cleanliness, equipment, disinfection, and the submission of such reports and returns to the Health Officer, as may be prescribed ;
- (c) regulating the appointment and powers of health visitors to advise persons as to infant-feeding, the proper nurture, care and management of young children and the promotion of cleanliness and regulating such other duties as may be assigned to health visitors ; and
- (d) providing for the sanitary inspection of all schools and colleges and for the medical inspection of children immediately before or at the time of, or as soon as possible after, their admission to a primary or secondary school and on such other occasions as the ¹[State Government] may direct, and authorizing the Commissioners to make such arrangements as the ¹[State Government] may approve, for attending to the health and physical condition of the children educated in such schools.

Rules for child welfare.

¹See foot-note 2 on page 297, *ante*.

[Ben. Act XV

(Part III.—Chapter XVI.—Extinction and Prevention of Fire.—Secs. 397—399.)

CHAPTER XVI.

EXTINCTION AND PREVENTION OF FIRE.

Power of fire brigade and other persons for suppression of fire.

397. For the prevention and extinction of fire, the Commissioners at a meeting may resolve to establish and maintain a fire brigade and to provide any implements, machinery or means of communicating intelligence which the Commissioners may think necessary for the efficient discharge of their duties by the brigade.

Power to direct operations in case of fire.

398. (1) On the occasion of a fire in a municipality, any Magistrate, any Municipal Commissioner, the Executive Officer, the Secretary to the Commissioners, any member of a fire brigade maintained by the Commissioners, then and there directing the operations of men belonging to the brigade, and (if directed so to do by a Magistrate or by a Municipal Commissioner) any police officer above the rank of constable may—

- (a) remove or order the removal of any person who by his presence interferes with or impedes the operations for extinguishing the fire or for saving life or property ;
- (b) close any street or passage in or near which any fire is burning ;
- (c) for the purpose of extinguishing the fire, break into or through, or pull down, or use for the passage of any hose or other appliance, any premises ;
- (d) cause mains and pipes to be shut off so as to give greater pressure of water in the place where the fire has occurred ;
- (e) call on the persons in charge of any fire engine to render such assistance as may be possible ; and
- (f) generally take such measures as may appear necessary for the preservation of life or property.

(2) No person shall be liable to pay damages for any act done by him under sub-section (1) in good faith.

Application of sections 397 and 398. Power to search for inflammable material in excess of authorized quantity.

¹398A. Sections 397 and 398 shall not apply to a municipality where the West Bengal Fire Services Act, 1950, is in force.

399. (1) The Commissioners may, without notice and at any period of the day or night, enter into and inspect a place which is suspected to contain kerosene, petroleum, or other inflammable material referred to in clauses (xi) and (xii) of section 370 in excess of the quantity permitted to be kept in such house or building under the conditions of a license granted under section 370.

West Ben. Act XVIII of 1950.

¹Section 398A was inserted by sec. 17 of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

of 1932.]

(Part III.—Chapter XVI.—Extinction and Prevention of Fire.—Secs. 400, 401.—Chapter XVII.—Markets and Slaughter-places.—Sec. 402.)

(2) Should any such excess quantity of such material be discovered, it may be seized and held subject to such order as a Magistrate may pass with respect to it.

(3) If the Magistrate decides that the material seized was stored in the place contrary to the conditions of such license, he may pass an order confiscating the same.

(4) Subject to any provision of, or made under, this or any other enactment, the material so confiscated may be sold by order of the Magistrate, and the proceeds, after defraying the expenses of such sale, shall be credited to the Municipal Fund.

(5) No order of confiscation under this section shall operate to prevent any criminal or other proceedings to which the person storing the material in excessive quantity may be liable.

400. The Commissioners at a meeting may, where it appears to be necessary for the prevention of danger to life or property, by public notice prohibit all persons from stacking or collecting hay, straw, wood, thatching grass, jute or other dangerously inflammable materials, or from placing mats on thatched huts or lighting fires in a place or within limits specified in the notice.

Stacking, etc., of inflammable materials.

401. The Commissioners at a meeting may make by-laws—

Power to make by-laws.

(a) providing for the guidance, discipline and conduct of the members of a municipal fire brigade and any volunteer fire brigade recognized by the Commissioners :

(b) prescribing the officer to whom and the place at which the outbreak of a fire shall be reported ;

(c) regulating, either by rendering licenses necessary, or otherwise, the letting off of fire-arms, fire-works, fire-balloons, bombs or other explosives ; and

(d) generally making provision for the procedure and precautions to be adopted by the public on the occasion of a fire and for any other things relating to fires in respect of which provision is necessary.

CHAPTER XVII.

MARKETS AND SLAUGHTER-PLACES.

402. (1) The Commissioners at a meeting may—

(a) construct, purchase, take on lease or otherwise acquire any land or building for the purpose of establishing a new municipal market or a new municipal slaughter-house or municipal stock-yard or of extending or improving any existing municipal market, municipal slaughter-house or municipal stock-yard, and

Power to provide and maintain municipal markets, slaughter-houses and stock-yards.

(b) from time to time build and maintain such municipal markets, municipal slaughter-houses and municipal stock-yards and such stalls, shops, sheds, pens and

[Ben. Act XV

(Part III.—Chapter XVII.—Markets and Slaughter-places.—
Secs. 403, 404.)

other buildings or conveniences for the persons carrying on trade or business in, or frequenting, such markets, slaughter-houses or stock-yards, and charge rent, tolls and fees for the right to expose goods for sale in such markets and for the use of shops, stalls and standings therein.

(2) The Commissioners at a meeting may place the collection of such rents, tolls and fees under the management of such persons as may appear to them proper or may farm out such rents, tolls and fees on such terms and subject to such conditions as they may think fit.

(3) The Commissioners may by general or special order—

(i) cancel or annul any right to expose goods for sale in such markets, and

(ii) refuse the use of any shop, stall or standing thereon without compensation for such cancellation or refusal,

if the person, who has been granted that right or use or any of his servants—

(a) closes his shop, stall or standing to the public, or

(b) fails to supply to the public the articles ordinarily kept for sale thereon,

at such times as may from time to time be fixed by the Commissioners.

(4) Municipal slaughter-houses may be situated within or, with the sanction of the District Magistrate, without the limits of the municipality.

Power to close municipal markets, slaughter-houses and stock-yards.

403. The Commissioners at a meeting may, at any time, close any municipal market, municipal slaughter-house or municipal stock-yard or any portion thereof, and the premises occupied for any market, slaughter-house or stock-yard or portion so closed may be disposed of as the property of the Commissioners.

Prohibition of use of municipal market without permission.

404. (1) No person shall, without the permission of the Commissioners, or, if the Commissioners have farmed out the rents and fees, without the permission of the farmer, sell or expose for sale any living thing or any article within a municipal market.

(2) If any person contravenes the provisions of sub-section (1) he may, in addition to any penalty which may be imposed on him under this Act, be summarily removed from such market by the Commissioners, or by the farmer, as the case may be, or by any of the officers or servants of the Commissioners or of the farmer.

of 1932.]

*(Part III.—Chapter XVII.—Markets and Slaughter-places.—
Secs.—405—407.)*

405. (1) In any municipality of which the Commissioners at a meeting have published an order in this behalf, no person shall—

Power to Commissioners to permit opening of new private markets.

- (i) establish a new private market for the sale of or for the purpose of exposing for sale any living thing intended for human food, or any other article of human food, except with the sanction of the Commissioners at a meeting ;
- (ii) without or otherwise than in conformity with the terms of a license granted by the Commissioners at a meeting in this behalf, keep open any private market or wilfully or negligently permit any place to be used as a private market :

Provided that the Commissioners shall not—

- (a) refuse a license for the maintenance of a market lawfully established at the date of the publication of such order of the Commissioners at a meeting if application be made within six months from such date, except on the ground that the place where the market is established fails to comply with any conditions prescribed by, or under this Act, or
- (b) cancel, suspend or refuse to renew any license granted under such order or by-laws framed in this behalf for any cause, other than the failure of the licensee to comply with the conditions of the license or with any provisions of, or made under, this Act.

(2) The Commissioners at a meeting may, by general or special order, cancel any licence granted under this section if the private market is closed to the public or if a supply of the articles, for the sale of which the license was granted, is not kept available for sale to the public at such times as may from time to time be fixed by the Commissioners.

406. The Magistrate, on the application of the Commissioners at a meeting, may order any place which has been used as a market without a license under section 405 to be closed as a market-place, and thereupon may take order to prevent such place being used as a market, and no person shall thereafter sell or expose for sale on or in such place any living thing intended for human food or any article of food.

Power to close unlicensed places.

407. (1) Notwithstanding anything contained in section 402, the Commissioners at a meeting may, subject to such conditions as they may impose with the approval of the ¹[State Government], grant and withdraw licenses, for the use of any premises either within or, with the sanction of the District Magistrate, without the limits of the municipality, for the slaughter of animals or animals of any specified description, for the sale of their flesh for human consumption.

Licensing of private slaughter-houses.

¹See foot-note 2 on page 397, *infra*.

[Ben. Act XV]

(Part III.—Chapter XVII.—Markets and Slaughter-places.—
Secs. 408—410.

(2) When such premises have been fixed by the Commissioners beyond municipal limits, the Commissioners shall have the same power to make by-laws for the inspection and proper regulation of the same as if they were within those limits.

Prohibition of slaughter of animals except at licensed or municipal slaughter-house.

Power to require paving and draining of private markets, and to alter structures in such markets.

408. No person shall slaughter any animal for the sale of its flesh for human consumption within the municipality at any place other than a municipal slaughter-house or a slaughter-house licensed under section 407.

409. The Commissioners at a meeting may, by written notice, require the owner or occupier of any private market,—

- (a) to cause the whole or any portion of the floor of the market-building or market-place, to be raised or paved with dressed stone or other suitable material,
- (b) to cause such drains to be made in or from the market building or market-place, of such material, size and description, at such level, and with such outfall as to the Commissioners may appear necessary, and
- (c) to cause a supply of water to be provided for keeping such market-building or market-place, in a clean and wholesome state, and,
- (d) to cause any shop, stall, shed or other structure in any private market to be altered or improved in such manner as the Commissioners at a meeting may consider necessary.

410. (1) The Commissioners at a meeting may—

- (a) define or determine the limits of any private market or declare what portions of such market shall be made part of the existing approaches, streets, passages and ways to and in such market, and
- (b) after hearing the owner or occupier of such market by written notice, require such owner or occupier to—
 - (i) lay out, construct, alter, clear, widen, pave, drain and light, to the satisfaction of the Commissioners, such approaches, streets, passages and ways to or in such market, and
 - (ii) provide such conveniences for the use of persons resorting to such market, and
 - (iii) provide adequate ventilation and lighting of the market-building or any portion thereof including shops and stalls,

Power to define limits of market and to require provision and maintenance of market approaches, etc.

as the Commissioners may think fit.

of 1932.]

*(Part III.—Chapter XVII.—Markets and Slaughter-places.—
Secs. 411, 412.)*

(2) The Commissioners at a meeting after hearing the owner or occupier of any private market may, by written notice, require such owner or occupier to maintain in proper order the approaches, streets, passages and ways to and in such market, and such other conveniences as are provided for the use of persons resorting thereto.

(3) The Commissioners shall cause a notice of the limits of any market, defined under sub-section (1), to be affixed in the English, Bengali, Hindi and Urdu languages as they may think necessary on some conspicuous spot on or near the building or place where such market is held.

411. (1) The Commissioners after giving the parties concerned an opportunity of being heard may—

Power to
expel
persons
contraven-
ing by-
laws.

(a) expel from any municipal market or municipal slaughter-house for such period as they may think fit any person who or whose servant has been convicted of contravening any by-law made under section 414 at the time in force in such market or slaughter-house.

(b) prevent such person, by himself or his servants, from further carrying on any trade or business in such market or slaughter-house or occupying any stall, shop, standing, shed, pen or other place therein, and

(c) determine any lease or tenure which such person may have in any such stall, shop, standing, shed, pen or place.

(2) If the tenant, or the agent of the tenant of the owner or lessee of any private market or slaughter-house licensed under section 405 or section 407, as the case may be, has been convicted for contravention of any by-law made under section 414 and specified by the Commissioners at a meeting in this behalf, the Commissioners at a meeting may require such tenant or agent to remove himself from any such market or slaughter-house, within such time as may be mentioned in the requisition, and if he fails to comply with such requisition he may, in addition to any penalty which may be imposed on him under this Act, be summarily removed from such premises by the owner or lessee thereof or by the servants of such owner or lessee.

(3) If it appears to the Commissioners at a meeting that in any such case the owner or lessee is acting in collusion with a tenant or agent convicted as aforesaid who fails to comply with a requisition issued under sub-section (2) the Commissioners at a meeting may, if they think fit, cancel the license of such owner or lessee in respect of such premises.

412. Every license granted under this chapter shall be in force until the end of the year during which it is granted, and shall be registered in a book to be kept for the purpose, containing the following particulars—

Duration
and registra-
tion of
license.

(a) the name and address of the owner of the land, and the name and address of the owner of the market or slaughter-house, and any lessee thereof ;

[Ben. Act XV]

(Part III.—Chapter XVII.—Markets and Slaughter-places.
—Secs. 413, 414.)

- (b) the extent and boundary of the market or slaughter-house ;
- (c) in the case of a market the description of the articles sold and the days on which it will be held.

Registration of transfers.

413. Every transfer of any interest in such market or slaughter-house shall be registered by the transferee at the municipal office within two months from the date of the transfer, and any market or slaughter-house the transfer of interest in which has not been registered in accordance with the provisions of the section shall be deemed to be land used as a market or slaughter-house, as the case may be, without a license.

By-laws for licensing, regulating and inspecting certain businesses.

414. The Commissioners at a meeting may make by-aws—

- (a) for the lay-out, construction, regulation and inspection of markets and slaughter-houses, for the provision of a proper supply of water, the prevention of cruelty, the proper cleaning and general regulation and control of the sanitary condition of such places, the feeding and watering of animals kept in slaughter-houses or in yards attached to slaughter-houses, and the prevention of nuisances and obstruction ;
- (b) in the case of any municipal market or municipal slaughter-house for the orderly conduct of business and for fixing the rents and other charges to be levied ;
- (c) in the case of any municipal market and any market licensed under section 405 for the prohibition during such hours as they may fix of making purchases by persons other than persons buying for *bona fide* domestic purposes ;
- (d) prescribing the conditions on or subject to which and the circumstance in which, and the areas, or localities in respect of which, licenses may be granted, refused, suspended or withdrawn for the use of any private market or slaughter-house ; and
- (e) in a municipality where a reasonable number of slaughter-houses have been provided or licensed by the Commissioners, controlling and regulating the admission within municipal limits for purposes of sale of the flesh (other than cured or preserved meat) for human consumption of any cattle, sheep, goats or swine slaughtered at a slaughter-house or place not maintained or licensed under this Act.

of 1932.]

(Part III.—Chapter XVIIA.—Fairs or Melas.—Secs. 414A—414C.—Chapter XVIII.—Weights and Measures.—Sec. 415.)

¹CHAPTER XVIIA.

FAIRS OR *Melas*.

¹414A. The Commissioners at a meeting may require the owner or lessee of a fair or *mela* or an owner or a lessee of land intending to establish a fair or *mela* thereon, to obtain a license in this behalf from the Commissioners on such terms and conditions, and on payment of such fees as may be prescribed.

Power of Commissioners to grant licenses for fairs or *melas*.

¹414B. The Commissioners at a meeting may, by public notice issued at least one month before the date of any fair or *mela*, prohibit prostitution within such fair or *mela* or within half a mile thereof.

Prohibition of prostitution within fairs or *melas*.

¹414C. The ²[State Government] may make rules regulating the granting of licenses for holding fairs or *melas* and fixing the fees in respect thereof.

Rules for fairs or *melas*.

CHAPTER XVIII.

WEIGHTS AND MEASURES.

415. (1) Where the Commissioners of any municipality, to which this section has been extended by the ²[State Government], have made by-laws under section 417, prescribing the standard weights and measures to be used within the municipality, they may at a meeting by order published in the prescribed manner prohibit the use within the municipality of any maund, seer or tola weight, or of any cubit measure other than such as conforms with the standard prescribed in the said by-laws.

Standard weights and measures in municipalities.

(2) When such order has been published, any person, authorized by them in this behalf, may at all reasonable times enter and inspect any market, building, shop, stall or place used for the sale of any goods, food or drug, and may inspect any instruments for weighing, and any weights or measures found therein and test the same with other weights and measures, and may seize any such instruments for weighing, and any such weight or measure which the person so authorized reasonably believes to be false or to contravene any by-laws made by the Commissioners under section 417, and may take the same to be examined or tested by the officer who shall be appointed by the Commissioners for the purpose.

¹This Chapter containing sections 414A, 414B and 414C was inserted by section 36 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936),

²See foot-note 2 on page 297, *ante*.

[Ben. Act XV]

(Part III.—Chapter XVIII.—Weights and Measures.—Secs. 416, 417.—Chapter XIX.—Food and Drugs.—Sec. 418.)

(3) Every person for the time being in charge of or employed in such market, building, shop, stall or place shall, if so requested by the person making such inspection, produce for such inspection and comparison all instruments for weighing and all weights, and measures kept therein.

Forfeiture
of false
weights
and
measures.

416. If it appears to the officer appointed under sub-section (2) of section 415 that the instrument for weighing or the weight or measure is false or contravenes any by-laws made by the Commissioners under section 417, he shall cause such instrument, weight or measure to be forfeited to the Commissioners in order that it may be destroyed or otherwise disposed of by the Commissioners.

Power to
make by-
laws.

417. The Commissioners at a meeting may make by laws—

- (a) prescribing the standard weights and measures to be used within the municipality, namely,—
 - (i) Government standard weights, that is to say, a maund consisting of forty seers, a seer consisting of eighty tolas and a tola consisting of one hundred and eighty grains ; or
 - (ii) a standard cubit consisting of eighteen inches for the measure of commodities other than land ; or
 - (iii) both the weights and the measure of length mentioned in sub-clauses (i) and (ii) respectively ;
- (b) providing standards of the weights and measures so prescribed ;
- (c) arranging for the safe keeping of such standards ;
- (d) fixing times and places for testing and verifying any weight or measure, which is of the same denomination as one of such standards ;
- (e) for stamping, in such manner as to prevent fraud, any weight or measure which is found to be correct ; and
- (f) fixing fees in respect of such verification and stamping.

CHAPTER XIX.

FOOD AND DRUGS.

Sale of Food and Drugs.

Licensing
of butchers
and of sale
of meat,
etc., out-
side
market.

418. (1) No person shall, without or otherwise than in conformity with the terms of a license granted by the Commissioners in this behalf—

- (a) carrying on in the municipality, or at any municipal slaughter-house without the municipality, the trade or business of a butcher, or

of 1932.]

(Part III.—Chapter XIX.—Food and Drugs.—Secs. 419—421.)

(b) habitually sell or expose for sale any animal, meat or fish intended for human consumption, in any place other than a municipal market or a private market.

(2) Nothing in clause (b) of sub-section (1) shall apply—

(a) to the sale of meat, or fish in any hotel or eating-house for consumption on the premises, or

(b) to fresh fish sold from, or exposed for sale on, a ship or boat in which it has been brought direct to the municipality after being caught at sea or in a river or in private fisheries or sold on the bank of a river or tank from which it was caught.

419. The Commissioners in their discretion may provide and maintain municipal bakeries and sweetmeat shops, and may at any time lease to any person such bakeries and shops on such terms and conditions as may to them seem proper.

Municipal
bakeries
and sweet-
meat shops.

420. (1) In any municipality to which the provisions of this section have been extended by the ¹[State Government], no person shall, without or otherwise than in conformity with the terms of a license granted by the Commissioners in this behalf, carry on in the municipality the trade or business of a dairyman or milkman or of a baker, confectioner, ice or aerated-water manufacturer, or sweet-meat maker or of a keeper of a tea-shop, hotel or eating-house.

Licensing
of dairy-
men,
bakers,
etc.

(2) In extending the provisions of this section to any municipality the ¹[State Government] may exempt any of the trades or businesses mentioned in sub-section (1) from the operation of the section.

421. (1) No person shall sell, store for sale, expose or hawk about for sale, or keep for sale,

(a) any living thing intended to be used as food ; or

(b) any other article of food or any drug intended to be used for human consumption,

which is diseased, unsound, unwholesome or unfit for human food or, in the case of drugs, for medicine.

Prohibi-
tion of sale
of diseased
animals or
unwhole-
some
articles
intended
for human
food.

(2) In any prosecution under this section the court shall, unless and until the contrary is proved, presume that any such living thing, article of food, or drug found in the possession of a person who is in the habit of keeping such living thing or keeping or manufacturing such other article of food or drug for the purpose of human consumption has been so kept or manufactured, as the case may be, for sale by such person.

¹See foot-note 2 on page 297, *ante*.

(Part III.—Chapter XIX.—Food and Drugs.—Secs. 422—427.)

Prohibition of the keeping of bread-stuffs, etc., otherwise than in covered recept-

422. No milk, bread-stuffs, cake, pastry, sweetmeats, confectionery or other article of food intended or commonly used for human consumption without further preparation by cooking shall be sold, exposed or kept or hawked about or stored for sale unless they be kept properly covered or otherwise guarded to the satisfaction of the Commissioners, so that they shall be protected from dust, dirt and flies.

423. [Registry of shops for sale of drugs used in western medical science.]—Rep. by sec. 18 of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

424. [Compounders' certificates.]—Rep. by sec. 18 of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

425. [Savings as to sale of drugs used by practitioners of indigenous medicines.]—Rep. by sec. 18 of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

Inspection, seizure and destruction of food and drugs.

Power to inspect place where unlawful slaughter of animals or sale of flesh is suspected.

426. If the Commissioners, Executive Officer, Health Officer, Sanitary Inspector, or any other officer authorized by the Commissioners in this behalf have or has reason to believe that any animal intended for human food is being slaughtered, or that the flesh of any such animal is being sold or exposed for sale, in any place or manner not duly authorized under this Act, the Commissioners, Executive Officer, Health Officer, Sanitary Inspector or other officer as aforesaid may obtain a warrant from a Magistrate to enter at any time by day or by night, without notice, and inspect such place for the purpose of satisfying themselves or himself as to whether any provision of this Act or of any rule or by-law made under this Act, at the time in force, is being contravened thereat.

Power to inspect place where living things, etc., intended for human consumption, are exposed for sale.

427. (1) The Commissioners, Executive Officer, Health Officer, Sanitary Inspector, or any other officer authorized by the Commissioners in this behalf may—

- (a) at all reasonable times enter into and inspect any place in which any living thing intended for human food or any other article of food or any drug, is deposited for the purpose of sale or of preparation for sale, or to which such living thing, article of food, or drug intended for human consumption is brought for such purpose,
- (b) inspect and examine any such living thing or other article of food or drug which may be found in any place referred to in clause (a), and
- (c) inspect and examine any living thing intended for human food or any other article of food, or any drug intended for human consumption, which is being hawked about for sale.

of 1923.]

(Part III.—Chapter XIX.—Food and Drugs.—Secs. 428, 429.)

(2) If, as a result of such inspection as is provided for in sub-section (1), prosecution is instituted under this chapter, then the burden of proving that any such living thing, or other article of food or drug as aforesaid was not exposed or hawked about or deposited or brought for sale or for preparation for sale or was not intended for human consumption shall rest with the party charged.

428. (1) If in the course of an inspection of a place made under section 427 any such living thing appears to the Commissioners, Executive Officer, Health Officer, Sanitary Inspector or other officer duly authorised by the Commissioners in this behalf to be diseased or if any article of food or drug appears to them or him to be unsound, unwholesome or unfit for human food or for medicine, as the case may be, or if any utensil or vessel used for preparing, or containing any such food or drug, which may be found in such place is of such kind or in such state as to render any food or drug prepared or contained therein unwholesome or unfit for human food or for medicine, as the case may be, they or he may seize and carry away such living thing, article of food, drug, utensil or vessel as aforesaid in order that the same may be dealt with as hereinafter in this chapter provided.

Power to seize living things, etc., intended for human consumption which are diseased, etc.

Explanation.—(1) Meat subjected to the process of blowing shall be deemed to be unfit for human food.

(2) A vessel made of any corrosive metal or material notified in this behalf by the ¹[State Government] as dangerous to health, which is used for the preparation of liquid tea for sale shall be deemed to be of the kind referred to in sub-section (1).

(2) The Commissioners, Executive Officer, Health Officer, Sanitary Inspector or such other officer authorized as aforesaid may, instead of carrying away any living thing, article of food, drug, utensil or vessel seized under sub-section (1), leave the same in such safe custody as they or he thinks fit in order that the same may be dealt with as hereinafter in this chapter provided; and no person shall remove such living thing, article of food, drug, utensil or vessel from such custody or interfere or tamper with the same in any way while so detained.

429. (1) When any living thing, article of food, drug, utensil or vessel referred to in section 428 is seized under that section, it may, with the written consent (witnessed by two other persons) of the owner or the person in whose possession it was found, be forthwith destroyed *****.

Destruction of living things, etc., seized under section 428.

(2) If such consent be not obtained, then, if any food or drug so seized is of a perishable nature, the officer seizing such food or drug may take it before ²[the Chairman, Vice-Chairman,

¹ See foot-note 2 on page 297, *ante*.

² The words beginning with "and the expenses" and ending with "such seizure" were omitted by sec. 47(1) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

³ These words were substituted for the words beginning with "a Magistrate" and ending with "used for human food" by sec. 47(2), *ibid*.

[Ben. Act XV]

(Part III.—Chapter XIX.—Food and Drugs.—Secs. 430, 431.)

Executive Officer or Health Officer and if in the opinion of the Chairman, Vice-Chairman, Executive Officer or Health Officer, as the case may be, such food or drug is unsound, unwholesome or unfit for human consumption, he shall condemn it and order it to be destroyed or so disposed of as to prevent it being sold or used for human consumption].

(3) A Magistrate shall not be bound to hear the owner of such food before passing an order under sub-section (2) and if in his discretion he deems it necessary to give a hearing to such owner, such hearing shall be merely for the purpose of determining whether such food is unsound, unwholesome or unfit for human food.

Sale of
unwhole-
some food
or drug.

430. If any Magistrate is satisfied on the application of the Commissioners, Health Officer, Sanitary Inspector or any other officer authorized by the Commissioners in this behalf that there is just cause to believe that any diseased living thing intended for human food or any food or drug, which is unsound, unwholesome or unfit for human food or medicine is in the possession of any person for the purpose of being sold or offered or exposed for sale within the limits of a municipality, for such consumption, he may grant a warrant to enter upon the premises of such person, and to search for and seize such living thing, article of food or drug.

Taking
before
Magistrate
animals,
etc.,
seized
under
section
428.

431. (1) Where any living thing, article of food, drug, utensil or vessel seized under section 428 is not destroyed by consent under sub-section (1) of section 429, or where an article of ¹[food or drug so seized] which is perishable is not dealt with under sub-section (2) of that section, it shall be taken before a Magistrate as soon as may be after such seizure.

(2) If it appears to the Magistrate that any such living thing is diseased or unsound or that any such food or drug is unsound, unwholesome or unfit for human food or for medicine, as the case may be, or that any such utensil or vessel is of such kind or in such state as is mentioned in sub-section (1) of section 428, he shall cause the same to be destroyed at the expense of the person in whose possession it was at the time of its seizure, or to be otherwise disposed of by the Commissioners so as not to be capable of being used as human food or medicine.

(3) If it appears to the Magistrate that any such living thing is not diseased or that any such food or drug is not unsound, unwholesome or unfit for human food or for medicine, as the case may be, or that any such utensil or vessel is not used for preparing, manufacturing or containing food or drugs which are unsound, unwholesome or unfit for human food or for medicine, as the case may be, the person from whose shop or place it was taken shall be entitled to have it restored to him, and it shall be in the discretion of the Magistrate to award him such compensation, not exceeding the actual loss which he has sustained, as the Magistrate may think proper.

¹These words were substituted for the words "food so seized" by sec. 48 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

of 1932.]

(Part III.—Chapter XIX.—Food and Drugs.—Secs. 432—434.)

Vesting of condemned food or drug in Commissioners.

432. When any authority directs in exercise of any powers conferred by this chapter, the destruction of any living thing, food or any drug, or the disposal of the same so as to prevent its being used as food or medicine, the same shall thereupon be deemed to be the property of the Commissioners.

Food and drugs directed to be destroyed, etc., to be property of Commissioners.

Slaughter of animals on bona fide religious or ceremonial occasions.

433. Nothing in this chapter shall apply to the slaughter of animals for a *bona fide* religious purpose or on a ceremonial occasion.

This chapter not to apply to slaughter of animals in certain cases.

Purity of milk-supply.

434. The Commissioners at a meeting may, and when required by the ¹[State Government] shall make by-laws regarding all or any of the following matters :—

Regulation of dairies and milk supply.

- (a) the registration of all dairymen, or persons selling milk, and dairies within the municipality ;
- (b) the inspection by the Commissioners or persons authorized by them of dairies and dairy cattle within or without the municipality from which milk is supplied to the inhabitants of the municipality and of persons in or about dairies who have access to the milk or any milk-receptacle ;
- (c) the duties of dairymen or persons selling milk in connection with the occurrence of infectious or contagious disease amongst persons residing or employed in or about their premises, and the furnishing by them of the names and addresses of their customers and sources of supply, and their duties in connection with reporting the occurrence in any dairy cattle of diseases which are communicable to man and of any disease of the udder ;
- (d) the conveyance and distribution of milk, and the labelling or marking of receptacles used for the conveyance of milk ;

¹See foot-note 2 on page 297, ante.

[Ben. Act XV]

(Part III.—Chapter XX.—Places for disposal of the Dead and Registration of Births and Deaths.—Secs. 435—437.)

- (e) the ventilation, including air-space, lighting, cleansing, drainage and water-supply of dairies ;
- (f) the health and good condition of the milch-cattle in dairies ;
- (g) the cleanliness of dairies, milk-receptacles, dairy cattle and all persons employed in or about dairies ;
- (h) the protection of milk against infection or contamination ;
- (i) the prevention of the sale of infected, contaminated, or dirty milk, the prohibition of the sale and the disposal of any milk suspected of being infected, contaminated or dirty, and the closing of any dairy where such milk is kept for sale or the exclusion therefrom of any animal, the milk from which there is reason to believe has conveyed or is likely to convey any infectious disease ; and
- (j) any other measures and precautions which in the opinion of the ¹[State Government] may be necessary to secure and maintain the purity of the milk-supply.

CHAPTER XX.

Places for disposal of the Dead and Registration of Births and Deaths.

Registration of existing burial or burning-grounds.

435. Within three months from the date of the publication of a notification by the ¹[State Government] extending this section to any municipality every place therein which is used as a burial or burning-ground for corpses shall be registered as such by the owner thereof in the office of the Commissioners but no fee shall be charged for such registration.

Permission to make or resume burial and burning-grounds and registration of same.

436. The Commissioners at a meeting may in their discretion at any time grant permission for the formation and making of burial or burning-grounds, or for the renewed use of such grounds as, owing to disuse, have not been registered under section 435 and when such permission has been granted shall cause such grounds to be registered.

Provision of places to be used as burial or burning-grounds.

437. The Commissioners at a meeting may, from time to time, out of the Municipal Fund, with the sanction of the Commissioner of the Division, provide fitting places either within or without the limits of the municipality to be used as burial or burning-grounds, and may impose such fee, as may be fixed in this behalf by the Commissioners at a meeting with the approval of the ¹[State Government], in respect of every corpse buried or burnt within such burial or burning-grounds.

¹ See foot-note 2 on page 297, ante.

of 1932.]

(Part III.—Chapter XX.—Places for disposal of the Dead and Registration of Births and Deaths.—Secs. 438—441.)

438. (1) After the expiration of the three months mentioned in section 435, no corpse shall be buried or burnt otherwise than in a place which is borne on the register of the Commissioners as an open burial or burning-ground or has been provided by the Commissioners for the purpose ; but the Commissioners may grant special permission for a corpse to be buried or burnt elsewhere.

Prohibition to bury or burn in unregistered ground.

Act V of 1898.

(2) Except with the special permission of the Commissioners no body shall be exhumed from any burial-ground except under the provisions of section 176 of the Code of Criminal Procedure, 1898 ; or of any other relevant enactment for the time being in force.

439. (1) The Commissioners at a meeting may, by public notice, order any burial or burning-ground, whether registered under section 435 or provided under section 437, which in their opinion is dangerous or likely to be dangerous to the health of persons living in the neighbourhood, or to be offensive to such persons, to be closed from a date specified in the notice, and shall, in such case, if no suitable place for burial or burning exists at a reasonable distance, provide a fitting place for the purpose.

Power to order certain burial and burning-grounds to be closed.

(2) When a notice is issued ordering the closing of any burial-ground under sub-section (1), private burial-places in such burial-grounds may be excepted from the notice, subject to such conditions as the Commissioners at a meeting may impose in this behalf :

Provided that the limits of such burial-places are defined and that they shall only be used for the burial of members of the family of the owners thereof.

If the Commissioners at a meeting are, at any time of opinion that any place formerly used as a burial or burning-ground which has been closed under this section or under any other enactment or authority has, by lapse of time, become no longer dangerous to health and may, without risk of danger, be again used for the said purpose, they may direct that it be reopened for such purpose and their order shall be noted in the register kept under section 435.

440. Any person aggrieved by any order made by the Commissioners under the powers conferred upon them by section 439 may appeal to the ¹[State Government], whose decision shall be final.

Appeals from orders under section 439.

441. (1) After the expiration of not less than twenty-four hours from the death of any person, the Commissioners may cause the corpse of such person to be burnt or buried. In every such case the corpse shall be disposed of, so far as may be possible, in a manner consistent with the religious tenets of the deceased.

Power to cause corpses to be burnt or buried according to the religious tenets of the deceased.

¹See foot-note 2 on page 297, *ante*.

[Ben. Act XV

(Part III.—Chapter XX.—Places for disposal of the Dead and Registration of Births and Deaths.—Secs. 442—445.)

(2) If a person dies in a hospital or temporary place of reception for the sick from any infectious disease, and the Health Officer or any registered medical practitioner certifies that in his opinion it is desirable, in order to prevent the risk of communicating any infectious disease or of spreading infection, that the body shall not be removed from such hospital or place, except for the purpose of being forthwith buried or cremated, no person shall remove the body except for that purpose; and the body when taken out of such hospital or place for that purpose shall be forthwith taken direct to the place of burial or cremation and there disposed of.

Power to provide for burial of paupers, free of charge.

442. The Commissioners at a meeting may, from time to time, out of the Municipal Fund, provide for the burial and burning of the dead bodies of paupers, free of charge, within the limits of the municipality.

Power to license fuel shops at burning-grounds.

443. (1) The Commissioners may, from time to time, grant licenses to persons applying for the same, for the sale at burning-grounds of fuel and other articles used for the cremation of dead bodies, and in case any such license is granted shall, from time to time at a meeting, prescribe a scale of rates for the sale of such articles; and no person not so licensed shall, within three hundred yards of any such burning-grounds, sell or offer for sale any such fuel or other article.

(2) The Commissioners may, on good and sufficient cause, revoke or withdraw any such license as they may think fit, and any person to whom such license is granted, who charges for the sale of any such articles at any higher rate than the rate fixed for such article in such scale, shall, at the discretion of the Commissioners, be liable to have his license cancelled and shall be liable also to fine as provided in this Act.

Registration of births and deaths.

444. The Commissioners, when required by the ¹[State Government] to do so, shall provide at a meeting for the registration of births and deaths within the limits of the municipality in accordance with the provisions of the Bengal Births and Deaths Registration Act, 1873, or any other similar Act for the time being in force.

Ben. Act
IV of 1873.

Appointment of Registrar and of Sub-Registrars at burning-ghats and burial-grounds.

445. (1) This section shall be construed as being in addition to and not in derogation of the provisions of the Bengal Births and Deaths Registration Act, 1873.

(2) The Commissioners, when required by the ¹[State Government] to do so, shall appoint at a meeting a person to be Registrar of Births and Deaths for the whole municipality and may also appoint and maintain at any burning-ghat or burial-ground a Sub-Registrar for the registration of all corpses brought to such burning-ghat or burial-ground for cremation or interment.

¹See foot-note 2 on page 297, ante.

of 1932.]

(Part III.—Chapter XX.—Places for disposal of the Dead and Registration of Births and Deaths.—Secs. 446—448.)

Ben. Act
IV of 1873.

446. Whenever a Sub-Registrar has been appointed for any burning-ghat or burial-ground under section 445, information of the particulars required by section 8 of the Bengal Births and Deaths Registration Act, 1873, to be known and registered may be given in respect of the death of any person whose body is brought to such burning-ghat or burial-ground for cremation or interment to such Sub-Registrar, and information so given shall be deemed to be information given to the Registrar of the district as required by the said section.

Information required by Bengal Act IV of 1873 to be given to such Sub-Registrar.

Section 9 of the said Act shall be applicable to all Sub-Registrars appointed under this Act.

447. Whenever a birth or death occurs in any hospital within the limits of any municipality in respect of which the ¹[State Government] has directed that all births and deaths shall be registered under the Bengal Births and Deaths Registration Act, 1873, it shall be the duty of the medical officer in charge of such hospital forthwith to send a notice in writing of the occurrence of such birth or death to the Commissioners in such form as the ¹[State Government] may prescribe, and in such case no other person shall be required to give information of such birth or death to a Registrar under the said Act or to a Sub-Registrar under this Act.

Information of births and deaths in hospital.

448. The ¹[State Government] may make rules—

Power to make rules.

(i) requiring the father or mother of every child born in any municipality or the occupier of the building in which such child is born or the medical practitioner or midwife in attendance at the time of birth within such specified period as may be fixed to give information of such birth to the Health Officer or Sanitary Inspector or other officer appointed for the purpose, and to furnish such particulars as may be prescribed by the ¹[State Government] in this behalf ;

(ii) requiring the nearest relative present at the death of, or in attendance during the last illness of, any person dying in any municipality or the medical practitioner, if any, who attended such person in his last illness or every other person present at the death, or, in their default, the occupier of the building in which the death occurred or some other person living in the building to report within a specified period such death to the Health Officer, Sanitary Inspector, Sub-Registrar appointed under section 445 or other officer appointed for the purpose, giving such particulars as the ¹[State Government] may prescribe ;

¹See foot-note 2 on page 297, ante.

(Part III.—Chapter XXI.—Nuisance.—Sec. 449.)

- (iii) controlling and regulating the use and management of burial and burning-grounds and the disposal of corpses ;
- (iv) generally for securing the better registration of births and deaths.

CHAPTER XXI.**Nuisance.****Nuisance.**

449. (1) The powers conferred by this chapter shall be deemed to be in addition to and not in derogation of any powers conferred by the other provisions of this Act.

(2) (a) The condition of—

- (i) any premises or part thereof of such a construction or in such a state or so situated or so dirty as to be a cause of annoyance to the inmates thereof, the neighbours or the public, or injurious or dangerous to health or unsafe, including places infested by, or providing haunts for mosquitoes or mosquito larvæ, flies or fly maggots, hookworm larvæ or ova, or rats or other noxious animals, or insects, and thereby liable to favour the spread of infectious disease ;
- (ii) any street, tank, pool, ditch, gutter, watercourse, sink, cistern, water-closet, earth-closet, privy, urinal, cess-pool, drain, dungpit or ash-pit so foul or in such a state or so situated as to be a cause of annoyance to the inmates of the premises, the neighbours or the public, as the case may be, or injurious or dangerous to health ;
- (iii) any premises by reason of abandonment or disputed ownership or for any other reason remain untenanted and thereby becomes a resort of idle and disorderly persons ;
- (iv) any school, factory, workshop or other trade premises so unclean as to be a cause of annoyance to the inmates, the neighbours or the public, or injurious to health, or not so ventilated as to render harmless, as far as practicable, all gases, vapours, dust or other impurities, generated in the course of the work carried on therein, that are a cause of annoyance to the inmates, the neighbours or the public or injurious to health, or so overcrowded as to be injurious to the health of the persons therein engaged or employed, or not provided with sufficient and suitable privy or urinal accommodation ;
- (v) any offensive trade or business so carried on as to be injurious to health or unnecessarily offensive to the public ;

of 1932.]

(Part III.—Chapter XXI.—Nuisance.—Sec. 450.)

- (vi) any well, tank or other water-supply injurious or dangerous to health ;
- (vii) any stable, cowshed or other building or enclosure in which any animal or animals are kept in such a manner or in such numbers as to be a cause of annoyance to the inmates of the premises, the neighbours or the public or injurious or dangerous to health ;
- (viii) any burial or burning-ground which in the opinion of the Commissioners at a meeting is injurious or dangerous or likely to be injurious or dangerous to the health of persons living in the neighbourhood or to the public or offensive to such persons ;
- (ix) any accumulation or deposit, including any deposit of animal or vegetable or mineral refuse, which is offensive to the neighbours or to the public or injurious or dangerous to health or any deposit of offensive matter, refuse or offal or manure within fifty yards of any public street, wherever situated ; and
- (b) any act, omission, condition or thing which the ¹[State Government] by notification shall declare to be a nuisance, or which after due inquiry by the Commissioners on the complaint of two or more persons residing in the neighbourhood is found by the Commissioners to be a cause of annoyance to the neighbours or to the inmates of the premises affected or to the public or to be dangerous or injurious to health ;

shall be deemed to be a nuisance to be dealt with under the provisions of this chapter :

Provided that no nuisance shall be deemed to have been committed in respect of any accumulation or deposit necessary for the effectual carrying on of any business, trade or manufacture, if it be proved to the satisfaction of the Court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business, trade or manufacture, and that the best available means have been taken for preventing injury or danger thereby to the public health.

“Author of a nuisance” in this chapter means a person by whose act, default, or sufferance the nuisance is caused, exists or is continued, whether he is an owner or occupier or both owner and occupier or any other person.

450. (1) The Commissioners shall cause to be made from time to time inspection of the municipality with a view to ascertain what nuisances exist calling for removal under the powers of this Act, and shall enforce so far as possible the provisions of this Act in order to remove the same, and otherwise put in force the powers vested in them relating to public health, so as to secure the proper sanitary condition of all premises within the municipality.

Inspection of Municipality for ascertaining existence of nuisance.

¹See foot-note 2 on page 297, *ante*.

(Part III.—Chapter XXI.—Nuisance.—Secs. 451—453.)

(2) If the Commissioners or Health Officer or a Sanitary Inspector have or has reasonable grounds for believing that a nuisance exists in any premises, they or he may make an inspection of such premises at any hour, when the operations suspected to cause nuisance are believed to be in progress or are usually carried on or when the special conditions suspected to cause the nuisance are believed to exist, and may cause such work to be done as may be necessary for an effectual examination of the said premises, including the opening of the ground or surface, where necessary, and the testing of the drains.

(3) Where the ground or surface has been opened and no nuisance is found to exist, the Commissioners shall restore the premises at their own cost.

Municipal
officer to
give in-
formation
as to
nuisances.
Notice to
remove
nuisance.

451. Information of any nuisance under this chapter may be given to the Commissioners by any person and every municipal officer shall bring the existence of any nuisance to the notice of the Commissioners or cause it to be brought to their notice.

452. The Commissioners, if satisfied of the existence of a nuisance, shall serve a notice on the author of the nuisance or if he cannot be found, then on the owner or occupier of the building or premises on which the nuisance arises or continues, requiring him to remove it within the time specified in the notice and to execute such works and do such things as may be necessary for that purpose and if the Commissioners think it desirable (but not otherwise) specifying any works to be executed to prevent a recurrence of the said nuisance :

Provided that—

(a) where the nuisance arises from any want or defect of a structural character, or where the building or premises are unoccupied, the notice shall be served on the owner ;

(b) where the author of the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act or default or sufferance of the occupier or owner or occupier of the building or premises, the Commissioners shall remove the same and may do what is necessary to prevent the recurrence thereof.

Procedure
in case
owner fails
to comply
with
notice.

453. (1) If the person on whom a notice to remove a nuisance has been served under section 452 fails to comply with any of the requirements thereof within the time specified, or if the nuisance, although removed since the service of the notice, is in the opinion of the Commissioners likely to recur on the same premises, the Commissioners shall cause a complaint relating to such nuisance to be made before a Magistrate, and such Magistrate shall thereupon issue a summons requiring the person on whom the notice was served to appear before him.

(2) If the Magistrate is satisfied that the alleged nuisance exists, or that, although removed, it is likely to recur on the same premises, he shall make—

(a) on the author thereof, or the owner or occupier of the premises, as the case may be, an order requiring him

of 1932.]

(Part III.—Chapter XXI.—Nuisance.—Secs. 454, 455.—Chapter XXII.—General.—Sec. 456.)

to comply with all or any of the requirements of the notice or otherwise to remove the nuisance within a time specified in the order and to do any works necessary for that purpose or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence, or an order both requiring the removal and prohibiting the recurrence of the nuisance, or

(b) an order on the Commissioners directing them to remove or prevent the recurrence of the nuisance or both, at the expense of the author thereof or the owner or occupier of the premises, as the case may be.

(3) Before making any order the Magistrate may, if he thinks fit, adjourn the hearing or further hearing of the case until an inspection, investigation or analysis in respect of the nuisance alleged has been made by some competent person.

(4) Any costs incurred by the Commissioners in executing an order of the Magistrate under clause (b) of sub-section (2) shall be payable on demand, and if not paid on demand, may be recovered by distress and sale of the movable property of the defaulter.

454. Whenever it appears to the satisfaction of the Magistrate that the author of the nuisance or that the owner or occupier of the premises is not known or cannot be found, the Magistrate may at once order the Commissioners to execute the works thereby directed and the cost of executing the same shall be payable on demand by the defaulter, if subsequently found, and if not paid on demand within fifteen days from the date of the execution of the work, may be recovered by distress and sale of the movable property of the defaulter, if known.

Magistrate may order local authority to execute works in certain cases.

455. The Magistrate in making an order under this chapter may, if he is of opinion that the person on whom a notice has been served to remove a nuisance or any other person would have been entitled to compensation, had the proceedings been taken otherwise than under this chapter, award such compensation to such person.

Award of compensation.

CHAPTER XXII.

General.

Education.

456. In every municipality there shall be constituted an Education Committee consisting of—

Education Committee.

(a) an educational officer, or other person interested in education appointed by the ¹[State Government] ;

¹See foot-note 2 on page 297, ante.

[Ben. Act XV]

(Part III.—Chapter XXII.—General.—Secs. 457—459.)

- (b) not less than two, or more than four Commissioners appointed from among themselves by the Commissioners at a meeting ; and
- (c) not more than three residents of the municipality not being Commissioners, appointed by the Commissioners at a meeting.

The Education Committee shall appoint its own Chairman and Secretary.

Duties of
Education
Committee.

457. It shall be the duty of the Education Committee, subject to the control of the Commissioners at a meeting and to the rules made by the ¹[State Government]—

- (i) to superintend all matters connected with the finance, accounts, maintenance and management of all schools, libraries and museums maintained by the Commissioners, and
- (ii) to determine the conditions to be complied with when grants are made by the Commissioners to schools, libraries and museums.

Transfer of
funds by
Govern-
ment for
education.

458. (1) The ¹[State Government] may transfer to the Commissioners such funds as it may deem necessary for expenditure on—

- (a) the improvement of any school or class of schools within the municipality under private management ; or
- (b) the maintenance or improvement of any school or class of schools maintained and managed by the Commissioners ; or
- (c) the provision of buildings to be used as students' hostels in connection with any school mentioned in clause (a) or clause (b).

(2) The Commissioners shall be charged with, and be responsible for, the proper distribution of funds transferred under subsection (1).

Powers to
make
rules
regarding
mainten-
ance and
manage-
ment of
schools.

459. The ¹[State Government] may make rules—

- (i) determining the classes of schools which may be maintained or aided by the Commissioners ;
- ²(ia) regulating the maintenance and management of such schools ;
- (ii) regulating the construction and repair of buildings connected with such schools ;
- (iii) regulating the appointment and salaries of masters and assistant masters of such schools ;

¹See foot-note 2 on page 297, *ante*.

²Clause (ia) was inserted by sec. 87 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

of 1932.]

(Part III.—Chapter XXII.—General.—Secs. 459A—461.)

- (iv) regulating the establishment of scholarships generally, or for the furtherance of technical or any other special form of education ; and
- (v) regulating the conduct of business and duties of Education Committees.

¹*Hospitals and dispensaries.*

¹459A. The ²[State Government] may make rules regulating the establishment, maintenance and management of hospitals and dispensaries by the Commissioners.

Power to make rules regulating the establishment, maintenance and management of hospitals and dispensaries.

Sarais, dharamsalas and lodging-houses.

460. The Commissioners at a meeting may make by-laws providing—

- (a) for the registration and inspection of *sarais*, *dharamsalas* and other lodging-houses ;
- (b) for the prevention of overcrowding and the promotion of cleanliness and ventilation therein ;
- (c) for the notices to be given and the precautions to be taken in the case of the outbreak therein of any infectious or contagious disease ; and
- (d) generally for the proper regulation of *sarais*, *dharamsalas* and other lodging-houses.

Power of Commissioners to regulate *sarais*, *dharamsalas* and lodging-houses by law.

Hackney-carriages.

461. The Commissioners may cancel any license issued to any owner or driver of any hackney-carriage under the Calcutta Hackney-Carriage Act, 1919, as extended to any area within a municipality, if such owner or driver does not at such times as may from time to time be fixed by the Commissioners keep available for hire to the public, and ply for hire when required, the hackney-carriage and horses in respect of which the license has been granted under that Act ; and on cancellation of such license the Commissioners may require such owner or driver, or any other person in whose possession the driver's ticket or license may be, to surrender the same to them forthwith.

Power to Commissioners to cancel license issued to the owner or driver of any hackney-carriage.

Ben. Act I
of 1919.

¹This sub-heading and section 459A were inserted by sec. 38 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²See foot-note 2 on page 297, *ante*.

[Ben. Act XV

(Part III.—Chapter XXII.—General.—Secs. 462, 463.)

Survey.

Survey of
a municipi-
pality.

462. (1) The Commissioners at a meeting may order that a survey or demarcation of boundaries shall be made of any or all of the lands and buildings situated in the municipality and may move the ¹[State Government] to direct that all or any of the provisions of the Calcutta Survey Act, 1887, shall, so far as may be practicable apply and be extended to such municipality ²[and if the State Government so directs then notwithstanding anything contained in that Act, all or any of its provisions shall, *mutatis mutandis*, apply and extend to such municipality].

Ben. Act I
of 1887.

(2) Where it appears to the ¹[State Government] that a survey or demarcation of boundaries should be made of all or any of the lands and buildings situated in a municipality, it may, by order, call on the Commissioners to make such a survey or to show cause why they should not be required to do so.

(3) The ¹[State Government] shall consider any objections and suggestions, which may be submitted by the Commissioners at a meeting and may either withdraw its order or direct that a survey shall be made.

(4) Where the order is made absolute, the ¹[State Government] may depute any person to make the survey and may require the Commissioners to defray from the Municipal Fund the cost of such survey, including the remuneration of the person deputed by the ¹[State Government].

(5) Where a survey has been made under this Act of all or any of the lands and buildings situated in a municipality, the ¹[State Government] may call on the Commissioners to make provision for the maintenance of such survey.

Powers to
make by-
laws for
mainte-
nance of
survey
maps.

463. The Commissioners at a meeting may make by-laws—

- (a) requiring the owner of any land or building to give notice to them of any alteration in the boundary of such land or of the erection of any new building thereon or of any material alteration or addition to a building,
- (b) providing for the erection from time to time and for the maintenance by owner of lands or buildings of suitable boundary marks defining the limits of all lands from separate holdings.

¹See foot-note 2 on page 297, *ante*.

²These words except the word "State" which was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950, were added by sec. 89 of the Bengal Municipal (Amendment) Act, 1996 (Ben. Act XI of 1986).

of 1932.]

(Part III.—Chapter XXII.—General.—Secs. 464—465.)

Map of municipal properties and municipal institutions.

464. The Commissioners shall maintain at the municipal office a map showing the position of all lands and buildings belonging to the Commissioners and of all municipal institutions and all public streets and drains.

Commissioners to maintain map showing all municipal properties, public streets and drains.

Dogs.

¹464A. The Commissioners may, by public notice, require that every dog shall wear a collar to which shall be attached a token to be issued by the Commissioners, and may, from time to time, by like notice, announce that, with effect from a date to be specified in the notice, every dog found wandering about streets or public places without a collar bearing such token will be liable to be destroyed or otherwise disposed of.

Power to require that dogs shall carry tokens.

465. (1) The Commissioners, by any person authorized by them in this behalf, may—

Disposal of mad and stray dogs.

(i) destroy or cause to be destroyed or confine, or cause to be confined, for such period as the Commissioners may direct, any dog suffering from any loathsome disease or from rabies, or reasonably suspected to be suffering from rabies, or bitten by any dog or other animal suffering or suspected to be suffering from rabies ; and

²(ii) after a date specified in this behalf in a notice published under section 464A, destroy or cause to be destroyed or otherwise dispose of any dog found wandering about streets or public places without a collar bearing a token issued by the Commissioners under section 464A.

¹Section 464A was inserted by sec. 40 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²Clause (ii) was substituted for the original clause (i) by sec. 41, *ibid.*

[Ben. Act XV]

(Part III.—Chapter XXII.—General.—Secs. 466—468.—
Chapter XXIII.—Hill Municipalities.—Sec. 469.)

(2) No damages shall be payable by the Commissioners or by any person authorized under this section in respect of any dog confined, destroyed or otherwise disposed of under this section.

1* *

Noxious animals.

Rewards
for de-
struction of
noxious
animals.

466. The Commissioners at a meeting may offer rewards for the destruction of noxious animals within the limits of the municipality.

Licenses.

Holder of
license to
produce it
when
required.

467. Every person to whom a license has been granted under this Act shall, at all reasonable times while such license remains in force, if required so to do by the Commissioners or by any person authorized by them in that behalf, produce such license to the Commissioners or to the person so authorized.

Suspension
or revoca-
tion of
license,
etc.

468. Any Magistrate before whom any person is convicted of an offence against the provisions of this Act, relating to the use of any place for a purpose for which a license is required or of the non-observance of any of the by-laws or conditions relating thereto made or imposed under this Act, in addition to the fine which may be imposed on such person under this Act, may suspend, for any period not exceeding two months, any such license, and the Commissioners, upon the conviction of any person for a second or subsequent like offence, may cancel his license.

CHAPTER XXIII.

HILL MUNICIPALITIES.

General.

Applica-
tion of
Act to hill
municipa-
lities.

469. The provisions of this chapter shall apply only to hill municipalities and shall be construed in modification of, or as supplementing, other provisions of this Act in their application to such municipalities :

Provided that sections 233, 237, 274 and 275 shall not apply to hill municipalities.

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**Delete footnote 1.*

the generality of the foregoing powers in sub-section (i) and the power conferred by clause (i) of section 392, make by-laws regarding the following matters :—

- Compulsory licensing of dogs and wearing of tokens ;
- (b) Imposition of a fee payable for such license or token or both ;
- (c) Seizure of dogs without tokens and custody of dogs seized ;
- (d) Seizure, confinement, inoculation or destruction of dogs suspected to be suffering from rabies ;
- (e) Compulsory notification of rabies ;
- (f) Inspection of dogs ;
- (g) Issue of muzzling orders ; and
- (h) Charges payable in respect of dogs seized or kept in custody".

Vide paragraph XVI of the Revenue Department notification No. 9485-E.A., dated the 28th February, 1936, published in the *Calcutta Gazette*, of the 5th March, 1936, Part I, pages 487-488.

of 1932.]

(Part III.—Chapter XXIII.—Hill Municipalities.—
Secs. 470—472.)

Definitions.

470. (1) The definition of drain under section 3 of this Act shall, in the case of a hill municipality, be deemed to include a *jhora*, water-course or natural drainage line, and the ¹[State Government] may, by notification, define for the purpose of this Act the limits of any *jhora*, water-course, channel or natural drainage line within a hill municipality.

Extension of definitions of "drain" and "masonry building".

(2) For the purpose of Chapter X in its application to hill municipalities the term masonry building shall be deemed to include a framed building.

471. In this chapter—

Definitions.

- (i) "Government road" means a road, street, square, court, alley or passage maintained ²[by the Central or the State Government] or at the public expense ;
- (ii) "private bridge" means any bridge which is not a public bridge as defined in this section ;
- (iii) "private drain" means any drain which is not a public drain as defined in this section ;
- (iv) "private road" means any road, street, square, court, alley or passage which is not a public road or Government road as defined in this section ;
- (v) "public bridge" means a bridge on or over which a public road or any public work is carried, and the property in which is for the time being vested in the Commissioners ;
- (iv) "public drain" means any drain which is vested in the Commissioners ;
- (vii) "public road" means a "public street" as defined in section 3 of this Act, but except in sections 231, 237, 251, 253 and rule 5 of Schedule VIII shall be deemed to exclude a Government road.

Roads.

472. (1) If it appears to the Commissioners that any public road or part thereof—

Absolute closing of public road.

- (a) threatens the stability or security of any hillside or bank or any immovable property thereon, or

¹ See foot-note 2 on page 297, *ante*.

² The words "by the Central or the Provincial Government" were originally substituted for the words "by the Government" by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act XV]

(Part III.—Chapter XXIII.—Hill Municipalities.—
Secs. 473—475.)

- (b) in consequence of its condition or its situation with reference to any adjacent hillside or bank cannot be efficiently maintained or required except at a cost, which in their opinion, is unreasonable.

the Commissioners may by public notice, declare such road or part to be absolutely closed :

Provided that the Commissioners shall, before declaring any public road or part thereof to be closed, be bound to provide other reasonably sufficient means of access to holdings adjacent to such road or part, if no such means of access already exist.

(2) From the date of any notice published under sub-section (1) in respect of any public road or part thereof, the Commissioners shall not be bound to maintain or repair such road or part ; and the site thereof may be disposed of or otherwise dealt with in such manner as a Commissioners may determine :

Provided that, if the Commissioners determine to sell or to let on lease or otherwise transfer any part of such site which is adjacent to any private land or building, the owner of such land or building shall have a prior right to buy or take on lease such part at a reasonable rate.

473. All private roads and bridges shall be subject to the inspection and control of the Commissioners.

Control
over
private
roads and
bridges.

Control
over
construc-
tion or
alteration
of private
roads.

474. (1) Every person who intends to construct, reconstruct or alter a private road shall send to the Commissioners an application for permission to execute the work.

(2) Every such application shall be accompanied by the documents or particulars prescribed in this behalf in Schedule VII.

(3) Every person applying for permission to construct, reconstruct or alter a private road must further mark out on the ground the alignment of the road for inspection by the Commissioners or an officer authorized by them in this behalf.

(4) The permission referred to in sub-section (1) may be either granted or refused absolutely, or granted subject to any conditions which the Commissioners may think fit to impose in accordance with the rules contained in the said Schedule VII.

(5) No work referred to in sub-section (1) shall be commenced without the written permission of the Commissioners.

Recons-
truction,
etc., of
private
road.

475. If it appears to the Commissioners that any private road is so situated or is in such a condition as to threaten the stability or security of any hillside or bank or any immovable property thereon, they may, by written notice, require the owner—

(a) to re-construct, re-grade, divert, alter or repair such road,
or

(b) to make a revetment or retaining-wall on either side or both sides of such road, or

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*(Part III.—Chapter XXIII.—Hill Municipalities.—
Secs. 476—479.)*

(c) to take such other order with such road as may be specified in the notice.

476. If it appears to the Commissioners that waterway ought to be provided on any private road or that the waterway provided on any private road ought to be enlarged they may, by written notice, require the owner of the road—

Provision or enlargement of waterway on private road.

(a) to provide and maintain waterway, or

(b) to enlarge the existing waterway,
as the case may require.

477. Whenever any private road is to be constructed, reconstructed, regraded, diverted, altered or repaired, and whenever waterway for any private road is to be provided or enlarged, in pursuance of section 474, section 475 or section 476, the work shall be executed in accordance with the rules contained in Schedule VII, so far as they are applicable to the particular case.

Rules as to construction, etc., of private roads and bridges.

478. If it appears to the Commissioners that the existence of any private road threatens the stability or security of any hillside or bank or any immovable property thereon, they may, by written notice, require the owner to close the road and to take such order with the site thereof as they may consider necessary for the stability or security of such hillside, bank or property and as may be prescribed in the notice :

Power to close private road.

Provided that no notice shall be issued under this section in respect of any private road which constitutes the only approach to a building, unless, in the opinion of the Commissioners, another road affording a suitable approach to the building can be constructed at reasonable expense.

479. (1) Whenever any building, wall, revetment or other erection or any part thereof, or any stone, tree, soil or debris from private premises, falls down and obstructs any public road or drain, the Commissioners may cause the obstruction to be removed.

Removal of materials falling upon or into public road or drain.

(2) All stone and trees so removed shall be separately heaped near the spot, and a notice shall be affixed in the vicinity calling upon the persons from whose premises the stone or trees or any of the same has or have fallen to take away the same.

(3) If, in the course of removing any obstruction under sub-section (1), it be found necessary to break up or blast any stone or to cut up any tree, the work shall be executed by the Commissioners ; and if any persons desire, in pursuance of a notice affixed under sub-section (2), to take away any stone or tree which has been so dealt with, they must first pay to the Commissioners the expenses incurred by them under this sub-section.

(4) If such stone or trees be not taken away by the said persons within seventy-two hours after the affixing of the said notice, or within any further period allowed by the Commissioners, the same shall become the property of the Commissioners.

[Ben. Act XV]

(Part III.—Chapter XXIII.—Hill Municipalities.—
Secs. 480—483.)Removal
of debris
falling
upon or
into
private
road or
drain.

480. If it appears to the Commissioners that any debris which has fallen upon or into any private road or drain ought to be removed, they may—

- (a) cause such debris to be removed at the expense of the owner of the road or drain, or
- (b) by written notice require the said owner to remove the debris.

Power to
close a
road or
part of a
road for
repairs or
other
public
purpose.

481. The Commissioners may close temporarily any public road or part of a public road for the purpose of repairing such road, or for the purpose of constructing any sewer, drain or bridge, or for any other purpose: provided that the Commissioners so closing any road shall be bound to provide reasonable means of access for persons occupying holdings adjacent to such road.

*Drains.*Control
over cons-
truction or
alteration
of private
drains.

482. (1) Every person who intends to construct, reconstruct, alter, stop-up or obstruct any private drain shall send to the Commissioners an application for permission to execute the work.

(2) Every such application shall be accompanied by general description of the drain.

(3) The permission referred to in sub-section (1) may be either granted or refused absolutely, or granted subject to any conditions which the Commissioners may think fit to impose in accordance with the rules contained in Schedule VIII.

(4) No work referred to in sub-section (1) shall be commenced without the written permission of the Commissioners.

483. (1) The Commissioners may, by written notice, require the owners of any land or building—

Recons-
truction,
repair, etc.,
of private
drains,
gutters,
etc.

- (a) to re-construct, enlarge, extend, alter, repair, make efficient, stop-up or remove any drain belonging to such land or building, or
- (b) to alter the inclination or direction of any such drain, or
- (c) to provide movable coverings, or gratings for any such drain of such nature as may be specified in the notice, or
- (d) to carry any such drain to such point of outlet or of junction with some other drain as may be specified in the notice.

(2) The Commissioners may, by written notice, require the owner or occupier of any building—

- (a) to provide and maintain a sufficient number of suitable roof-gutters and down pipes or masonry platforms for carrying water from the roof of the building into such drains as may be specified in notice, or
- (b) to renew, alter, repair or remove any such gutters, pipes or platforms already provided for the building.

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*(Part III.—Chapter XXIII.—Hill Municipalities.—
Secs. 484—486.)*

(3) The said gutters must be of such dimensions, and have such slope, and the said pipes must be of such dimensions and the bends in such pipes must be made at such angles, as may be prescribed by rules made by the Commissioners at a meeting.

484. If any land or building is not drained to the satisfaction of the Commissioners, they may, by written notice, require the owner to provide a drain therefor, at such inclination, and to such point of outlet or of junction with some other drain as may be specified in the notice.

Power to require provision of private drain.

485. (1) If it appears to the Commissioners that any lands or buildings belonging to different owners can be drained or the drainage thereof improved, more economically or advantageously in combination than separately, the Commissioners may cause such lands or buildings to be drained, or the drainage thereof to be improved, in such manner as they may consider suitable.

Private drainage in combination.

(2) The Commissioners may cause any drain which has been provided or improved under sub-section (1) to be maintained or repaired in such manner as they may consider suitable.

(3) All expenses incurred under sub-section (1) or sub-section (2) in connection with the drainage of any lands or buildings, shall be paid by the owners of such lands or buildings in proportion to the benefits derived by them respectively.

(4) The said proportion shall be determined by the Commissioners.

Safety of the hillside.

486. If it appears to the Commissioners that any building or portion of a building or anything affixed to a building or any wall or structure on any land, is in such a condition as to threaten the stability or security of any hillside or bank, or any immovable property thereon,

the Commissioners may, by written notice, require the owner of such land or building—

Power where buildings, etc., threaten the stability of other immovable property.

(a) to take down such building, portion, thing, wall or structure and remove the materials, or

(b) to secure or repair such building, portion, thing, wall or structure, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof or to take such other order therewith as may be prescribed in the notice, and

(c) in case (a), also to take such order with the site of such building, wall or structure, for ensuring the stability or security of any hillside or bank or any immovable property thereon, as may be prescribed in the notice,

*(Part III.—Chapter XXIII.—Hill Municipalities.—
Secs. 487—490.)*

Power
where
hillside
or bank
threatens
the
safety of
buildings.

487. If it appears to the Commissioners that the condition or situation of any hillside or bank, being private property, is such as to threaten the safety of any building, and that the safety of such building cannot be ensured by taking action under section 486 and also that such building threatens the safety of some other building, they may, by written notice, require the owner of such first mentioned holding—

- (a) to take down the building and remove the materials, or
- (b) to secure the building, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof, or to take such other order therewith as may be prescribed in the notice and may also, by written notice, require the owner of such other building to secure the same, in such manner as may be prescribed in the notice, or to make a revetment for the support thereof, or to take such other order therewith as may be prescribed in the notice.

Power to
require
revetment,
turfing or
sloping.

488. If it appears to the Commissioners that the condition or the situation of any land, being private property is such as to threaten the stability or security of any hillside or bank or any immovable property thereon, the Commissioners may, by written notice, require the owner of the land to do all or any of the following things, namely :—

- (a) to construct and maintain a revetment, retaining-wall or toe-wall upon any part of the land ;
- (b) to reconstruct, enlarge, strengthen, alter or repair any revetment, retaining-wall, or toe-wall already standing on the land ;
- (c) to turf the land or any portion thereof ;
- (d) to slope the land or any portion thereof.

Execution
of work
where
owners of
adjacent
property
would be
benefited.

489. If any owner to whom a notice is issued under section 488 represents to the Commissioners, within fifteen days after the service of the notice, that the work required by the notice will directly or substantially benefit the owners of any adjacent buildings or land, the Commissioners may, after hearing all the owners concerned, themselves cause the said work to be executed ;

and the expenses thereby incurred shall be recovered from any or all of such owners, in such proportions as the Commissioners may direct.

Power to
execute
work in
combination.

490. If it appears to the Commissioners that lands or buildings belonging to two or more owners can be protected by the execution of works of the nature referred to in section 488, more economically or advantageously in combination than separately,

the Commissioners may themselves cause such works or any of them to be executed, maintained and kept in repairs ;

and the expenses thereby incurred shall be recovered from the said owners, in such proportion as the Commissioners may direct.

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(Part III.—Chapter XXIII.—Hill Municipalities.—
Secs. 491—495.)

491. Notwithstanding anything contained in section 488, the Commissioners may, at any time, themselves cause any revetment, retaining-wall or toe-wall to be constructed, reconstructed, enlarged, strengthened, altered or repaired on any private land immediately abutting upon any public road, drain, revetment or retaining-wall ;

Power to execute works where public road, drain, revetment or retaining-wall is affected.

and the expenses thereby incurred shall be paid by the Commissioners and the owner of such land in such proportions as the Commissioners may direct.

492. Whenever any revetment, retaining-wall or toe-wall is to be constructed, reconstructed, enlarged, strengthened, altered or repaired, or any land is to be turfed, or sloped in pursuance of sections 475, 486, 487, 488, 489, 490 or 491, the work shall be executed in accordance with the rules contained in Schedule IX, so far as they are applicable to the particular case.

Rules as to revetting, turfing and sloping.

Control over occupation of buildings.

493. (1) If it appears to the Commissioners that any building or the site thereof is, in consequence of its condition or of its situation with reference to any hillside or bank, unsafe,

Power to prohibit occupation of unsafe or insanitary building.

they may, by written notice, prohibit the owner or any other person from occupying or continuing to occupy the buildings or from permitting it to be occupied until the building or the site, as the case may be, is rendered safe to the satisfaction of the Commissioners.

(2) If it appears to the Commissioners that the drainage of, or the latrine accommodation provided for, any masonry or framed building is defective,

they may, by written notice, prohibit the owner from letting the building for occupation until the defects have been remedied to their satisfaction.

Appeal.

494. (1) The ¹[State Government] may, by notification in the ²[Official Gazette], appoint an Engineer to hear appeals under this Act in respect of hill municipalities.

Appeal to specially appointed Engineer.

(2) An appeal shall lie to the said Engineer from any order (not being an order apportioning expenses) or requisition made under sections 364, 474, 482, 485, 486, 487, 488, 489, 490, 491 or 493.

495. An appeal shall lie to the Commissioner of the Division from any order apportioning expenses incurred in pursuance of sections 485, 488, 490 or 491.

Appeal to Commissioner of the Division.

¹See foot-note 2 on page 297, *ante*.

²See foot-note 2 on page 301, *ante*.

*(Part III.—Chapter XXIII.—Hill Municipalities.—
Secs. 496—499.)*

Limitation
of time for
appeal.

496. Every appeal under section 494 or section 495 must be presented within a period of thirty days after the date of the order or requisition against which the appeal is made :

Provided as follows :—

- (a) if in any case the said period expires on a day when the office of the aforesaid Engineer or Commissioner is closed, the appeal may be presented on the day that the said office is reopened ;
- (b) any appeal may be admitted after the expiration of the said period when the appellant satisfied the appellate authority that he had sufficient cause for not presenting the appeal within such period.

Assessors
in appeals
to Com-
missioner
of the
Division.

497. (1) In dealing with any appeal preferred to him under section 495 the Commissioner shall be assisted by two assessors, who shall be selected and summoned by him for each appeal or group of appeals from a list to be prepared annually by the Deputy Commissioner :

Provided that, if any assessor so summoned fails to appear, the appeal may be heard in his absence.

(2) The assessors, if present, shall be consulted by the Commissioner, and their opinion shall be recorded in writing ; but the Commissioner shall not be bound to conform to their opinions.

Record of
decision on
appeal or
reference.

498. (1) If the engineer appointed under section 494, or the Commissioner of the Division, rejects any appeal preferred to him under this Act, he shall, by written order, specifically state the grounds for such rejection.

(2) The said Engineer shall, when deciding any reference made to him under this Act, specifically state in writing the grounds for his decision.

(3) A copy of all orders passed by the said Engineer or Commissioner on any such appeal, or by the said Engineer on any such reference, shall forthwith be forwarded by him to the Commissioners, who shall thereupon inform the appellant, or the person who made the reference, as the case may be, of such orders.

By-laws.

Additional
power to
make by-
laws
in hill
muni-
cipalities.

499. (1) In addition to any by-laws that they may make under any other section of this Act, the Commissioners of a hill municipality may, at a meeting, make by-laws—

- (a) enforcing, regulating or prohibiting the cutting or destroying of trees or shrubs and the planting and maintenance of particular kinds of trees or shrubs, and regulating or prohibiting the making of excavations or removal of soil or quarrying ; and providing for the alteration, repair and proper maintenance of buildings and compounds, for the closing of roads and

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(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

by-paths and for the general protection of the surface land on any hillside where such by-laws appear to the Commissioners to be necessary for the maintenance of a water-supply, the preservation of the soil, the prevention of landslips or of the formation of ravines or torrents, the protection of land against erosion or the deposit thereon of sand, gravel or stones ;

- (b) regulating the rule of the road ;
- (c) rendering licenses necessary within the Municipality for animals, vehicles and other conveyances let out on hire for a day or part thereof ;
- (d) prescribing the conditions subject to which such licenses may be granted, refused, suspended or withdrawn ;
- (e) regulating the charges to be made for the hire of such animals, vehicles and other conveyances ;
- (f) preventing the straying of poultry ;
- (g) preventing or regulating the grazing or straying of cattle on hillsides or banks ; and
- (h) regulating any of the matters referred to in sections 474, 477, 482 and 492.

(2) The word “cattle,” as used in clause (g), shall have the same meaning as in the Cattle Trespass Act, 1871.

1 of 1871.

CHAPTER XXIV.

Penalties.

500. (1) Whoever commits any offence by—

- (a) contravening any provision of any of the sections, sub-sections, clauses of sections or provisos of this Act mentioned in the first column of the following table, or
- (b) failing to comply with any direction lawfully given to him or any requisition lawfully made upon him under any of the said sections, sub-sections, clauses or provisos,

Certain offences punishable with fine.

shall be punished with fine which may extend to the amount mentioned in that behalf in the third column of the said table.

(2) Whoever, after having been convicted of any offence referred to in clause (a) or clause (b) of sub-section (1), continues to commit such offence shall be punished for each day after the first during which he continues so to offend, with fine which may extend to the amount mentioned in this behalf in the fourth column of the said table.

Explanation.—The entries in the second column of the following table headed “Subject” are not intended as definitions of the offences described in the provisions mentioned in the first column, or even as abstracts of those provisions, but are inserted merely as references to the subject thereof.

(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos. 1	Subject. 2	Fine which may be imposed. 3	Daily fine which may be imposed. 4
Section 62, sub-section (2), clause (e).	Commissioners unlawfully acquiring share or interest or holding office of profit.	Five hundred rupees.	
Section 72, sub-section (2).	Municipal officers and servants unlawfully acquiring share of interest in contract.	Two hundred and fifty rupees.	
Section 127 ...	Requisition for list of the number of persons residing in a holding.	One hundred rupees.	
Section 134 ...	Requisition for returns, rent or annual value and description of holdings.	Twenty rupees	Five rupees.
Section 143 ...	Obligation to give notice of re-occupation of unoccupied holding.	Twenty-five rupees	Five rupees.
Section 144 ...	Obligation to give notice of transfer of title in land or building.	Twenty-five rupees	Five rupees.
*Section 144A ...	Obligation to give notice of transfer of title in land or building by inheritance.	Twenty-five rupees	Five rupees.
Section 164 ...	Unlawful purchase at a municipal auction.	Five hundred rupees.	
Section 171, sub-section (1)	Obligation to forward statement of carriages and animals liable to taxation.	Twenty rupees.	
Section 172 ...	Obligation to forward statement of carriages and animals liable to taxation.	Twenty rupees.	
Section 175 ...	Keeping or possessing carriage or animal without a license.	Three times the amount payable for license, exclusive of the amount so payable.	
Section 178, sub-section (2).	Failure to attend when summoned.	Fifty rupees.	
*Section 182 ...	Failure to take out a license.	Twice the amount payable for license, exclusive of the amount so payable.	
Section 188 ...	(i) Keeping or possessing cart not duly registered.	Twice the amount payable for license, exclusive of the amount so payable.	
	(ii) Failing to affix registration number to cart.	Five rupees.	

*These entries were inserted by sec. 42(i) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

*These entries were inserted by sec. 42 (ii), *ibid*.

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(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 197 ...	Unlawfully refusing to leave a municipal ferry boat or to remove goods therefrom.	Ten rupees.	
Section 198 ...	Keeping unauthorised ferry boat.	Fifty rupees ...	Ten rupees.
Section 204 ...	Refusing to pay or avoiding payment of toll.	Fifty rupees	
Section 207 ...	Failure to hang up table of tolls.	Fifty rupees ...	Ten rupees.
Section 211 ...	Demanding or taking unauthorised toll.	Fifty rupees	
Section 218, sub-section (1).	(i) Prohibition of erection of, or addition to, building or wall within street alignment prescribed under section 217.	Two hundred and fifty rupees	Twenty-five rupees
	(ii) Requisition to remove building erected or added within street alignment prescribed under section 217.	Fifty rupees ...	Ten rupees.
Section 218, sub-section (3).	Prohibition of erection of, or addition to, building between street alignment and building-line prescribed under section 217.	Two hundred rupees ...	Twenty rupees.
Section 218, sub-section (4).	Requisition to remove building erected or added to between street alignment and building-line prescribed under section 217.	Fifty rupees ...	Ten rupees.
Section 224 ...	(i) Prohibition of erection of, or addition to, building or wall within street alignment of street projected under section 223.	Two hundred and fifty rupees	Twenty-five rupees.
	(ii) Requisition to remove building erected or added to on site between street alignment and building-line of a street projected under section 223.	Fifty rupees ...	Ten rupees.
Section 226 ...	Unlawfully making or laying out a private street.	Two hundred and fifty rupees	Twenty-five rupees.
Section 228, sub-section (1).	Requisition on owner of private street or owner or occupier of adjoining land to level, etc., such street.	One hundred rupees ...	Ten rupees.

(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 280, sub-section (2).	Unlawfully interfering with arrangement made for guarding against accident.	Fifty rupees.	
Section 281, sub-section (2).	Unlawfully constructing hoardings or fences, etc., or removing the same or failure to construct or to keep the same sufficiently lighted at night.	One hundred rupees	Twenty rupees
Section 282 ...	Unlawfully depositing movable property on or making excavation in, or enclosing any public street or failure to make suitable provision for passage of the public, to erect sufficient fences and to keep the same sufficiently lighted.	One hundred rupees ...	Twenty rupees
Section 284 ...	Unlawfully using road closed to certain classes of traffic.	One hundred rupees.	
Section 285, sub-section (1).	Putting up verandahs, etc., to project over street without permission.	Two hundred and fifty rupees.	
Section 285, sub-section (4).	Requisition on owner or occupier of building to comply with condition subject to which permission was given to put up verandahs, etc., projecting over street.	One hundred rupees ...	Twenty rupees
Section 286, sub-section (1).	Constructing platform upon or over any public street or drain without permission.	Two hundred and fifty rupees	Twenty-five rupees.
Section 286, sub-section (2).	Failure to take out a licence for platform.	Fifty rupees ...	Ten rupees.
Section 287 ...	Requisition on owner to remove obstruction to public street or drain caused by fallen building, wall, etc.	Fifty rupees ...	Ten rupees.
Section 288, sub-section (1).	Digging or cutting up a public street without permission.	One hundred rupees.	
Section 289 ...	Requisition on owner or occupier to put up and keep in good condition proper troughs and pipes for receiving or carrying off water from building or land.	Fifty rupees ...	Ten rupees.

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(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 240, sub-section (1), clause (b).	Requisition to remove wall, hoarding, etc., over any house-gully or any public street, drain, etc.	Fifty rupees	Ten rupees.
Section 241, sub-section (1).	Requisition on owner or occupier of building to remove or alter verandah, platform or other structure or fixture attached to building.	One hundred rupees ...	Ten rupees.
Section 242 ...	Requisition on owner of land to trim or cut hedges or trees.	Fifty rupees	Ten rupees.
Section 243 ...	Requisition on owner of any pool, ditch, tank, etc., which causes damage.	One hundred rupees ...	Ten rupees.
Section 244, sub-section (2).	Unlawfully destroying, pulling down, etc., name of public street or number of house.	Twenty rupees.	
Section 250 ...	Direction to deposit sewage, etc., in specified places and at specified times.	Ten rupees.	
Section 251, sub-section (2).	Placing rubbish or offensive matter on a public street, except at specified times and in proper receptacles.	Ten rupees.	
Section 252, sub-section (2), clause (a).	Direction to collect and remove rubbish and offensive matter accumulating on business premises or on premises on which building work is going on.	Ten rupees.	
Section 253 ...	Keeping dirt, dung, etc., in or about a house, except in proper receptacle.	Ten rupees.	
Section 254 (i), (ii), or (iii).	Throwing any rubbish, offensive matter, etc., upon any street or in any sewer or drain [improper] use of drain or discharge of water, steam, etc.	Ten rupees.	
Section 255, sub-section (1).	Failure to dispose of dead bodies of animals.	Twenty-five rupees.	
Section 258, sub-section (1).	Provision for privy and urinal for building.	Fifty rupees.	

*This word was substituted for the words "in proper" by sec. 2 and the First Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 258, sub-section (3).	Provision for privy, urinal and bathing accommodation for building.	Fifty rupees.	
*Section 258, sub-section (4).	Direction to provide for septic tank latrine.	One hundred rupees.	
*Section 259, sub-section (1).	Requisition on owner of premises to provide or alter privy or urinal or bathing or washing place for or in premises.	Fifty rupees ...	Five rupees.
*Section 259, sub-section (2).	Requisition on owner of premises to provide septic tank latrine for or in premises.	One hundred rupees ...	Fifty rupees.
Section 260 ...	Construction, renewal, etc., of house-drain, cess-pool, etc., and appurtenances thereof in contravention of rules.	One hundred rupees ...	Ten rupees.
Section 261 ...	Construction or keeping of house-drain, service-privy, urinal or cess-pool within fifty feet of tank, etc.	Fifty rupees ...	Ten rupees.
*Section 263, sub-section (1), clauses (a), (b) and (c),	Disobeying any lawful order or requisition to repair, alter, remove, shut off, or provide latrine, etc.	Fifty rupees ...	Ten rupees.
*Section 263, sub-section (1), clause (d).	Disobeying lawful order or requisition to provide septic tank latrine.	One hundred rupees	Ten rupees.
Section 264, sub-section (1) ...	Failure to provide house gully.	Fifty rupees ...	Ten rupees.
Section 266 ...	Failure or refusal to keep latrine, urinal, etc., in proper condition.	Fifty rupees ...	Ten rupees.
Section 272 ...	Unlawfully connecting house-drain with municipal drain.	One hundred rupees	Ten rupees.
Section 273 ...	Unlawful construction, alteration, etc., of drains leading to municipal sewers, etc.	One hundred rupees	Ten rupees.
Section 275 ...	Requisition on owner of premises to make house-drain and provide appliances or fittings or to remove house-drain, etc.	Fifty rupees ...	Five rupees.

*These entries were inserted by sec. 49 (1) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

*These entries were substituted for the entry "Section 259, sub-section (1)" by sec. 49(2), *ibid.*

*These entries were substituted for the entry "Section 263" by sec. 49 (3), *ibid.*

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(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 276 ...	Requisition on owner of premises to make house-drain communicating with closed cess-pool.	Fifty rupees ...	Five rupees.
Section 290 ...	Requisition on owner or occupier to lay down separate service-pipes for separate holdings.	One hundred rupees ...	Ten rupees.
Section 298, sub-section (1).	Fraud in respect of meter ...	One hundred rupees.	
Section 299 ...	Injuring meter or fittings thereof.	One hundred rupees.	
Section 301, sub-section (3).	Improper use of water supplied for domestic purposes.	Ten rupees ...	Five rupees.
Section 303, sub-section (4).	Requisition to alter or add to work, pipe or fitting unsuitable for the purpose.	Fifty rupees ...	Five rupees.
Section 305 ...	(i) Taking water out of municipal limits, without authorization.	One hundred rupees.	
	(ii) Negligently allowing water to be wasted.	Twenty rupees.	
	(iii) Unlawfully drawing off or diverting water from waterworks.	Five hundred rupees ...	Fifty rupees.
Section 307 ...	Commencing work for supply of water to any premises without sending estimate and specification.	One hundred rupees ...	Ten rupees.
Section 315, sub-section (2).	Prohibition of erection of building without permission or so as to deprive another building of proper means of access.	Two hundred rupees ...	Fifty rupees.
Section 320 ...	Sending written notice after completion of erection of a new building.	Fifty rupees.	
Section 321, sub-section (2).	Requisition on owner to make specified alterations.	Two hundred and fifty rupees in the case of a masonry building and twenty-five rupees in the case of a hut.	Twenty-five rupees in the case of a masonry building and five rupees in the case of a hut.

(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 323, sub-section (1).	Constructing the roofs or external wall of a house with inflammable materials without permission.	Twenty-five rupees. ...	Five rupees.
Section 323, sub-section (2).	Requisition on owner of a building to remove roof or external wall of inflammable materials.	Fifty rupees ...	Five rupees.
Section 333, sub-section (1).	Requisition to discontinue the erection of a new building or other unlawful work.	Two hundred rupees ...	Twenty-five rupees.
Section 337 ...	Requisition on owners or occupiers to carry out in <i>bustee</i> hut-improvements specified in the schedule annexed to the report.	Two hundred rupees ...	Twenty-five rupees.
Section 341, sub-section (2).	Failure to keep open private street in <i>bustee</i> for scavenging or other purposes and for use of tenants.	Fifty rupees ...	Ten rupees.
Section 342 ...	Failure to keep open bathing and privy accommodation in <i>bustee</i> for use of tenants.	Fifty rupees ...	Ten rupees.
Section 343, sub-section (2).	Requisition on owner to maintain in proper order street, drains, etc., in <i>bustee</i> according to standard plan.	Two hundred rupees ...	Twenty rupees.
Section 344, sub-section (6).	Requisition on owner to carry out improvements before re-erecting huts.	One hundred rupees ...	Ten rupees.
Section 345, sub-section (4).	Erection of hut or portion of hut within alignment prescribed for private streets in <i>bustee</i> or other area.	Fifty rupees.	
Section 345, sub-section (5).	Failure to keep open private street in <i>bustee</i> for scavenging or other purposes and for use of tenants.	Fifty rupees ...	Ten rupees.
Section 346, sub-section (1).	Requisition on owners or occupiers to remove huts.	Fifty rupees ...	Ten rupees.
Section 347 ...	Requisition on person erecting masonry building in <i>bustee</i> to leave space of ¹ [fifteen] feet from centre line of street.	One hundred rupees ...	Twenty rupees.

¹This word was substituted for the word "twenty" by sec. 10 of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

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(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 348 ...	Direction to set apart tanks, wells, etc., for drinking, culinary, bathing and washing purposes.	Fifty rupees ...	Five rupees.
Section 349 ...	Requisition to cleanse or protect tank, well, etc., used for drinking or culinary purposes.	Fifty rupees ...	Five rupees.
Section 350 ...	Prohibition of use of polluted water for drinking or culinary purposes.	Fifty rupees.	
Section 355 ...	Requisition to take measures to prevent the use of polluted water.	Fifty rupees ...	Five rupees.
Section 356, sub-section (1).	Requisition to cleanse, fill up or de-water well, pool, ditch, tank, pond or marshy ground or to drain off or remove waste or stagnant water.	One hundred rupees ...	Ten rupees.
Section 357, sub-section (1).	Making excavation or digging cess pool, tank, pond, well or pit	One hundred rupees.	
Section 357, sub-section (2).	Requisition to fill up excavation. cess-pool, tank, etc., unlawfully made.	Fifty rupees ...	Five rupees.
Section 359, sub-section (1).	Requisition to secure or protect dangerous well, tank or excavation.	One hundred rupees ...	Ten rupees.
Section 360 ...	Prohibition of cultivation of crops, use of manure or method of irrigation injurious to health and the growth of water-hyacinth and noxious weeds.	Fifty rupees ...	Five rupees.
Section 362 ...	Requisition on owner or occupier to lime wash or otherwise cleanse building.	Twenty-five rupees ...	Five rupees.
Section 363 ...	Requisition on owner or occupier to clear noxious vegetation and to improve bad drainage.	One hundred rupees ...	Ten rupees.
Section 364, sub-section (1).	Requisition on owner or occupier to take down, repair or secure wall or building or fixture in a ruinous state, etc.	Two hundred and fifty rupees	One hundred rupees.

(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 364, sub-section (2).	Requisition on inmate to vacate building in ruinous state, etc.	One hundred rupees ...	Fifty rupees.
Section 365, sub-section (1).	Requisition on owners or occupiers to execute works or take measures with respect to buildings or block of buildings in order to prevent risk of disease.	Five hundred rupees in the case of a masonry building or block of masonry buildings and one hundred rupees in the case of a hut or block of huts.	One hundred rupees in the case of a masonry building or block of masonry buildings and twenty rupees in the case of a hut or block of huts.
Section 366, sub-section (2).	Using building declared unfit for human habitation.	Two hundred and fifty rupees	Fifty rupees.
Section 367, sub-section (2).	Requisition on owner or occupier to demolish or execute work on building declared unfit for human habitation.	Two hundred and fifty rupees	Fifty rupees.
Section 368, sub-section (1).	Requisition on owner to abate overcrowding in building or room.	Twenty-five rupees ...	Five rupees.
Section 368, sub-section (4).	Requisition on inmate to vacate overcrowded building or room.	Twenty-five rupees ...	Five rupees.
Section 370, sub-section (1).	Using any place for any of the purposes specified in section 370 without license.	One hundred rupees ...	Ten rupees.
Section 370, sub-section (3).	Breach of condition of license under section 370.	One hundred rupees ...	Ten rupees.
Section 372, sub-section (1).	Keeping horses and cattle for trade or business without license.	Fifty rupees ...	Five rupees.
Section 372, sub-section (2).	Breach of condition of license issued under section 372.	Fifty rupees ...	Five rupees.
Section 373, sub-section (1).	Keeping horses and cattle except in public stables.	Fifty rupees ...	Five rupees.
Section 373, sub-section (4).	Breach of condition of license issued under section 373.	Fifty rupees ...	Five rupees.
Section 374, sub-section (1).	Keeping pigs, sheep, etc., without license.	Fifty rupees ...	Five rupees.
Section 374, sub-section (2).	Breach of condition of license issued under section 374.	Fifty rupees ...	Five rupees.

(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 377 ...	Information of existence of infectious disease in any building.	Fifty rupees.	
Section 378, sub-section (3).	Removal to hospital of patient suffering from infectious or contagious disease	One hundred rupees.	
Section 379, sub-section (1).	Requisition on occupier to vacate building or part thereof to admit of disinfection.	Fifty rupees	Ten rupees.
Section 381 ...	Letting infected building ...	Five hundred rupees.	
Section 382, sub-section (2), clause (b).	Direction to disinfect clothing, bedding or other articles likely to retain infection.	Fifty rupees	Five rupees.
Section 383 ...	Washing infected articles at unauthorised places.	Fifty rupees.	
Section 384 ...	Infected person making, selling or touching any article of food or medicine or drug or taking part in business of washing clothes or selling clothes.	Fifty rupees.	
Section 385, sub-section (1).	Giving, lending, etc., infected article.	Fifty rupees.	
Section 386, sub-section (1).	Infected person exposing himself in a public place or allowing himself to be carried in public conveyance, etc., and person in charge of an infected person, dead body or infected article permitting the same to be so exposed or carried, as the case may be.	Fifty rupees.	
Section 387, sub-section (1).	Failure to take public conveyance to appointed place for disinfection.	One hundred rupees.	
Section 387, sub-section (4).	Using infected public conveyance.	One hundred rupees.	
Section 388, sub-section (2).	Carrying infected person, dead bodies, etc., in other than special conveyance without permission.	One hundred rupees.	
Section 390, sub-section (1).	Direction to close or prohibition against attending market, <i>sarai</i> , etc., to prevent spread of infection.	Two hundred and fifty rupees	Twenty-five rupees.

(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 391, sub-section (1).	Direction to close school or to exclude scholars from attendance to prevent spread of infection.	Two hundred and fifty rupees	Twenty-five rupees.
Section 393, sub-section (1).	Direction to regulate operations in case of fire.	One hundred rupees.	
Section 400 ...	Prohibition of stacking or collecting hay, wood, etc., within certain limits.	One hundred rupees.	Ten rupees.
Section 404, sub-section (1).	Selling in municipal market without permission.	Twenty-five rupees.	
Section 405, sub-section (1).	(i) Establishing new private market without sanction.	One thousand rupees.	
	(ii) Keeping open any private market or permitting any place to be used as a private market.	Two hundred rupees	Twenty-five rupees.
Section 406 ...	Using as market a place which Magistrate has directed to be closed.	One hundred rupees ...	Twenty rupees.
Section 408 ...	Slaughtering animal at place other than a municipal or licensed slaughter-house.	Fifty rupees.	
Section 409 ...	Requisition to pave, drain, etc., or otherwise improve private market.	Fifty rupees ...	Ten rupees.
Section 410, sub-sections (1) and (2).	Requisition on owner or occupier of private market to lay out, alter, etc., approaches, roads, etc., and to provide conveniences for, and maintain, the same.	Fifty rupees ...	Ten rupees.
Section 411, sub-section (2).	Requisition on tenant or agent to remove himself from market or slaughter house.	Fifty rupees	Ten rupees.
¹ Section 414A ...	Holding a fair or <i>mela</i> without or otherwise than in conformity with the terms of a license.	Two hundred rupees	Twenty-five rupees.
¹ Section 414 B ...	Prohibition of prostitution. ...	Five hundred rupees.	
Section 415, sub-section (1).	Using false or incorrect weight or measure or instrument for weighing.	Fifty rupees ...	Five rupees,

¹These entries were inserted by sec. 42 (iii) of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

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(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 415, sub-section (3).	Failure to produce for inspection instruments for weighing, weights and measures.	Fifty rupees.	
Section 418, sub-section (1).	Carrying on trade of butcher or selling animals, meat or fish outside market without license.	One hundred rupees	Ten rupees.
Section 420, sub-section (1).	Carrying on trade of dairyman, milkman, baker, etc., without license.	One hundred rupees.	Ten rupees.
Section 421, sub-section (1).	Sale, etc., of diseased living things or unwholesome article intended for human food.	Two hundred and fifty rupees for a first offence and one thousand rupees for any subsequent offence.	
Section 422	Prohibition of keeping breadstuffs, etc., for sale except in properly covered receptacles.	Fifty rupees.	
1. . . . .	. . . . .	. . . . .	. . . . .
1. . . . .	. . . . .	. . . . .	. . . . .
Section 428, sub-section (3).	Removing, interfering or tampering with living thing, food, drug, etc., seized and left in custody.	Two hundred rupees.	
Section 435	Registration of place used as a burial or burning ground.	One hundred rupees.	
Section 436	Formation or using place as burial or burning ground without permission.	Five hundred rupees.	
Section 438, sub-section (1).	Burning or burying corpse except in a place provided for the purpose without permission.	One hundred rupees.	
Section 438, sub-section (2).	Exhuming corpse in certain cases without permission.	Five hundred rupees.	

The entries relating to section 423 and sub-sections (1) and (2) of section 424 were omitted by sec. 19 of the Bengal Municipal (West Bengal Amendment) Act, 1951 (West Ben. Act XXVIII of 1951).

(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 439, sub-section (1).	Direction to close burial or burning ground injurious to health or offensive to neighbourhood.	Five hundred rupees ...	Fifty rupees.
Section 441, sub-section (2).	Disposal of dead bodies of persons dying from infectious disease.	One hundred rupees.	
Section 443, sub-section (1).	Selling fuel or other article for cremation without license.	Fifty rupees.	
Section 443, sub-section (2).	Selling articles for cremation at a higher rate than the rate fixed.	Fifty rupees.	
Section 447 ...	Notice of birth or death by medical officer in charge of hospital.	Fifty rupees.	
Section 453, sub-section (2).	Direction for removal of nuisance.	Five hundred rupees ...	Fifty rupees.
Section 461 ...	Failure to surrender license.	One hundred rupees ...	Ten rupees.
Section 467 ...	Production of license for inspection.	Fifty rupees ...	Ten rupees.
Section 474, sub-section (5).	Construction of private road without permission, etc.	Five hundred rupees ...	One hundred rupees.
Section 475 ...	Requisition to re-construct, etc., a private road or bridge.	Five hundred rupees ...	One hundred rupees.
Section 476 ...	Requisition to provide and maintain or to enlarge waterway.	Two hundred and fifty rupees	Fifty rupees.
Section 477 ...	Construction, etc., of private road or bridge.	Two hundred and fifty rupees.	
Section 478 ...	Requisition to close a private road.	Two hundred and fifty rupees	Fifty rupees.
Section 479 ...	Requisition on owner to remove obstruction to public road or drain caused by fallen building, etc.	Fifty rupees ...	Ten rupees.

(Part III.—Chapter XXIV.—Penalties.—Sec. 500.)

Sections, sub-sections, clauses or provisos.	Subject.	Fine which may be imposed.	Daily fine which may be imposed.
1	2	3	4
Section 480, clause (b)	Requisition to remove <i>debris</i> falling upon or into a private road or drain.	Fifty rupees ...	Ten rupees.
Section 482, sub-section (4).	Construction of private drain without permission, etc.	Two hundred and fifty rupees	Fifty rupees.
Section 483, sub-section (1).	Requisition to re-construct, etc., private drain.	Two hundred and fifty rupees	Fifty rupees.
Section 483, sub-section (2).	Requisition to provide, repair, etc., roof gutters, etc.	One hundred rupees ...	Ten rupees.
Section 484	Requisition to provide a drain.	Two hundred and fifty rupees	Fifty rupees.
Section 486 ...	Requisition to take down a building, etc., where buildings, etc., threaten the stability of other immovable property.	Five hundred rupees ...	One hundred rupees.
Section 487 ...	Requisition to take down or secure buildings, etc., where hillside or bank threatens their safety.	Five hundred rupees ...	One hundred rupees.
Section 488 ...	Requisition to construct revetment, etc.	Five hundred rupees ...	One hundred rupees.
Section 492 ...	Revetment, turfing and sloping.	Two hundred and fifty rupees	Fifty rupees.
Section 493, sub-section (1).	Prohibition of occupation of unsafe building.	Two hundred and fifty rupees in the case of a masonry or framed building and fifty rupees in the case of a hut.	Fifty rupees in the case of a masonry or framed building and ten rupees in the case of a hut.
Section 493, sub-section (2).	Prohibition of occupation of insanitary building.	Fifty rupees ...	Ten rupees.
Section 513 ...	Obstructing Commissioners, Chairman, Vice-Chairman, etc., in making any entry, search, etc., or carrying on work under this Act.	Two hundred rupees for a first offence and five hundred rupees for a subsequent offence.	

[Ben. Act XV]

(Part III.—Chapter XXIV.—Penalties.—Secs. 501—504.)

Fine for unlawfully commencing, carrying on or completing building work.

501. If the erection of any new building—

- (a) is commenced without obtaining the written permission of the Commissioners, or
- (b) is carried on or completed otherwise than in accordance with the particulars on which such permission was based, or
- (c) is carried on or completed in breach of any provision contained in this Act or in any rules or by-laws made thereunder, or of any direction or requisition lawfully given or made under this Act or such rules or by-laws, or

if any alteration of, or addition to, any building or any other work made or done for any purpose in, to or upon any building is commenced, carried on or completed in breach of section 326,

the owner of the building shall be liable to fine, which may extend in the case of a masonry building to five hundred rupees and in the case of a hut to fifty rupees, and to further fine, which may extend in the case of a masonry building to one hundred rupees and in the case of a masonry building to one hundred rupees and in the case of a hut to ten rupees for each day during which the offence is continued after the first day.

Penalty for obstructing contractor or removing mark.

502. Any person who, in contravention of section 541, obstructs or molests any person with whom the Commissioners have entered into a contract, or, in contravention of section 542, removes any mark, shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to two months.

Power to impose penalties for breach of rules or by-laws.

503. In making any rule or by-law the Commissioners may, with the sanction of the ¹[State Government], or in the case of any rule, model rule or by-law the ¹[State Government] may direct that the breach thereof shall be punishable with a fine which may extend to fifty rupees and, when the breach is a continuing one, with a further fine not exceeding five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

Penalty on officers, etc., taking unauthorised fees.

504. If any person employed under this Act (not being a public servant within the meaning of section 21 of the Indian Penal Code) shall accept or obtain or agree to accept or attempt to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing or forbearing to do any official act, or for showing or forbearing to show in the exercise of his official functions favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person with the Commissioners or with any public servant or ²[with any Government] in the discharge of his official duties, he shall be

Act XLV
of 1860.

¹See foot-note 2 on page 297, *ante*.

²These words were substituted for the words "with the Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1932.]

(Part III.—Chapter XXV.—Procedure.—Secs. 505, 506.)

punished with imprisonment, for a term which may extend to three years, or with a fine which may extend to five thousand rupees, or with both.

CHAPTER XXV.

Procedure.

Rules and by-laws.

505. (1) The power of the ¹[State Government] to make rules under this Act is subject to the condition of the rules being made after previous publication.

Previous publication of rules made by Government.

(2) Any rule made by the ¹[State Government] may be general for all municipalities or for all municipalities not expressly excepted from its operation or may be special for the whole or any part of any one or more than one municipality as the ¹[State Government] may direct.

506. (1) Rules and by-laws made by the Commissioners under this Act shall not take effect unless and until they have been submitted to, and confirmed by, the ¹[State Government].

Confirmation and publication of rules and by-laws made by the Commissioners.

(2) Such rules and by-laws shall not be confirmed—

(i) unless one month at least before the making of the application notice of the intention to apply for confirmation has been given in one or more of the local newspapers circulated within the municipality to which such rules or by-laws relate, or if there be no such newspapers, then in such manner as the Commissioners may direct, and

(ii) unless for one month at least before such application a copy of the proposed rules or by-laws has been kept at the office of the Commissioners, and has been open during office hours thereat to the inspection of the inhabitants of the municipality to which such rules or by-laws relate, without fee.

(3) The commissioners shall, on the application of any inhabitant of the municipality, furnish him with a copy of such proposed rules or by-laws, on payment of four annas for every hundred words contained in the copy.

(4) The ¹[State Government] may rescind any rule or by-law which it has confirmed, and thereupon the rule or by-law shall cease to have effect.

¹See foot-note 2 on page 297, *ante*.

[Ben. Act XV]

(Part III.—Chapter XXV.—Procedure.—Secs. 507—510.)

Publication of rules, by-laws, orders and notices.

Publication
of rules,
by-laws,
orders and
notices.

507. Every rule, by-law, order, public notice or other document directed to be published under this Act shall be written in, or translated into, ¹Bengali ²[and in such other language or languages commonly used in the district as may be decided by the Commissioners at a meeting], and deposited in the office of the Commissioners, and ³[copies thereof] shall be posted up in a conspicuous position at such office, and in such other public places as the Commissioners may direct ;

and a public proclamation shall be made throughout the municipality by beat of drum, notifying that such copy has been so posted up, and that the original is open to inspection in the office of the Commissioners.

Signature and service of notices, etc.

Signature
of notices
etc.,
may be
stamped.

508. (1) Every license, written permission, notice, bill, summons or other document which is required by this Act or by any rule or by-law made thereunder to bear the signature of the Chairman, Vice-Chairman or any other municipal officer, shall be deemed to be properly signed if it bears a facsimile of the signature of the Chairman, Vice-Chairman or such municipal officer stamped thereupon.

(2) Nothing in sub-section (1) shall be deemed to apply to a cheque drawn upon the Municipal Fund.

Notices,
etc., by
whom to
be served
or issued.

509. All notices, bills, summonses and other documents required by this Act or by any rule or by-law made thereunder to be served upon, or issued to, any person, shall be so served or issued by municipal officers or servants or by other persons authorised by the Commissioners at a meeting in this behalf.

Service
how to be
effected on
owner or
occupier of
premises.

510. When any notice, bill, summons or other document is required by this Act or by any rule or by-law made thereunder to be served upon or issued to any person as owner or occupier of any land or building, it shall not be necessary to name the owner or occupier in the document and the service or issue thereof shall be effected—

(a) by giving or tendering such document to the owner or occupier :

Provided that if there be more than one owner or occupier

Page 526—

For footnote 1, substitute the following footnote, namely :—

¹In the application of the Act to the Darjeeling district (except Siliguri sub-division), after the word "Bengali", the words "and such other languages as the State Government may, by notification, specify" shall be substituted, *vide* L. S. G. Department notification No. 607/M1A-15/55, dated the 19th January, 1957, published in the *Calcutta Gazette* of the 14th February, 1957, Part I, page 553.

of 1932.]

(Part III.—Chapter XXV.—Procedure.—Secs. 511, 512.)

practicable to serve the document on every one of them the Commissioners may serve the document on any one or more of them as they may think fit ; or

- (b) if the owner or occupier is not found, by giving or tendering such document or by sending it by post to any adult male member of the family, or to a servant in the employ, of the owner or occupier or of any one of the owners or occupiers ; and
- (c) both in the cases mentioned in clauses (a) and (b) by affixing such notice, bill, summons, or other document on some conspicuous part of the land or building (if any) or other thing to which the document relates.

511. When any notice, bill, summons or other document is required by this Act or by any rule or by-law made thereunder to be served upon or issued to any person otherwise than as owner or occupier of any land or building, such service or issue shall be effected—

Service how to be effected otherwise than on owner or occupier of premises.

- (a) by giving or tendering such document to such person ; or
- (b) if such person is not found, by leaving such document at his last known place of abode or business in the municipality or by giving or tendering the same or by sending it by post to any adult male member of his family or adult male servant in his employ ; or
- (c) if such person does not reside in the municipality and his address elsewhere is known to the Commissioners, by forwarding such document to him by post in a cover bearing the said address ; or
- (d) if none of the means referred to in clauses (a), (b), or (c) be available, by affixing such notice, bill, summons or other document on some conspicuous part of the land or building (if any) or other thing to which the document relates.

Powers of entry and inspection.

512. The Chairman, Vice-Chairman, Executive Officer, Health Officer, Engineer or Sanitary Inspector, or any other person authorized by the Commissioners in this behalf, may enter into or on any building or land with or without assistants or workmen, in order to make any inquiry, inspection, test, examination, survey, measurement or valuation or for the purpose of lawfully placing or removing pipes or meters, or to execute any other work which is authorized by the provisions of this Act or of any rule, by-law or order made thereunder, or which it is necessary for any of the purposes of this Act or in pursuance of any of the said provisions, to make or execute :

Power of entry to inspect, survey or execute work.

Provided that—

- (a) except when it is in this Act or in any rule or by-law made thereunder otherwise expressly provided, no such entry shall be made between sunset and sunrise ;

(Part III.—Chapter XXV.—Procedure.—Secs. 513, 514.)

- (b) except when it is otherwise expressly provided as aforesaid, no dwelling-house, and no part of a public building used as a dwelling place, shall be so entered without the consent of the occupier thereof, unless the said occupier has received at least twelve hours' previous notice of the intention to make such entry ;
- (c) reasonable notice shall be given in every case even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to women to remove to some part of the premises where their privacy may be preserved ;
- (d) due regard shall be paid, so far as may be compatible with the exigencies of the purpose of the entry, to the social and religious usages of the occupants of the premises.

Prohibition of obstructing entry.

513. No person shall, in any way obstruct the Commissioners, Chairman, Vice-Chairman, Executive Officer, Health Officer, Sanitary Inspector or any municipal officer or servant, or any other person authorised by the Commissioners at a meeting or otherwise, in making any entry, inspection or search under this Act, or any person accompanying them at their request or acting under their orders for the purpose of such entry or acting under their orders in carrying out any work, under the provisions of this Act, or under any rule or by-law made thereunder for the carrying out of such work.

Enforcement of requisitions.

Procedure when owners or occupiers required to execute works by Commissioners.

514. (1) Whenever it is provided in this Act or in any rule or by-law made thereunder that the Commissioners or the Commissioners at a meeting may require the owners or the occupiers, or the owners and occupiers of any land or building, to execute any work or to do anything within a specified time, such requisition shall be made, as far as possible, by a notice to be served on every owner or occupier who is required to execute such work or to do such thing : but, if there is any doubt as to the persons who are owners or occupiers, such requisition may be made by a notification to be posted up on or near the spot at which the work is required to be executed or the thing done, requiring the owners or the occupiers, or the owners and occupiers, of any land or building, to execute such work or to do such thing within a specified time ; and in such notification it shall not be necessary to name the owners and occupiers. If no time is specified in this Act or in any rule or by-law made thereunder for the execution of such work or the doing of such thing the notice shall prescribe a reasonable period for carrying the requisition into effect, and shall be served as provided in this sub-section.

(2) Every requisition provided in sub-section (1), other than a requisition under section 240 or section 241, or under the provisions of Chapter XXI shall give notice to the persons to whom it is addressed that, if they fail to comply with the requisition or to prefer an objection against such requisition as provided in section

of 1932.]

(Part III.—Chapter XXV.—Procedure.—Secs. 515—518.)

515, the Commissioners will enter upon the land or building and cause the required work to be executed, or the required thing to be done ; and that in such case the expenses incurred thereby will be recovered from the persons who are required in such requisition to execute such work or do such thing.

515. A person who is required by a requisition as provided in section 514, other than a requisition under section 240 or section 241, or under the provisions of Chapter XXI to execute any work or to do any thing may, instead of executing the work or doing the thing required, prefer an objection in writing to the Commissioners against such requisition within five days of the service of the notice or posting up of the notification containing the requisition ; or if the time within which he is required to comply with the requisition be less than five days, then within such less time.

Objection
by persons
required to
execute
any work.

Except as provided in section 516, such objection shall be heard and disposed of by the Chairman, Vice-Chairman or Executive Officer.

516. If the objection alleges that the cost of executing the work or of doing the thing required will exceed three hundred rupees, such objection shall be heard and disposed of by the Commissioners at a meeting ; unless the Chairman, Vice-Chairman or Executive Officer certifies that such cost will not exceed three hundred rupees, in which case the objection shall be heard and disposed of by the Chairman, Vice-Chairman or Executive Officer ;

Procedure
if person
objecting
alleges
that work
will cost
more than
three
hundred
rupees.

Provided that in any case in which the Chairman, Vice-Chairman or Executive Officer has certified his opinion as afore-said, and the objection has in consequence thereof been heard and disposed of by the Chairman, Vice-Chairman or Executive Officer the person making the objection may, if the requisition made upon him is not withdrawn on the hearing of his objection, pay in the said sum of three hundred rupees to the Commissioners as the cost of executing the work or doing the thing required ; whereupon such person shall be relieved of all further liability and obligation in respect of executing the work or doing the thing required and in respect of paying the expenses thereof ; and the Commissioners themselves shall execute such work, or do such thing, and shall exercise all powers necessary therefor.

517. The Chairman, Vice-Chairman, Executive Officer or the Commissioners at a meeting, as the case may be, shall after hearing the objection and making any inquiry which may be deemed necessary, record an order withdrawing, modifying or making absolute the requisition against which the objection is preferred ; and, if such order does not withdraw the requisition, it shall specify the time within which the requisition shall be carried out, which shall not be less than the shortest time which might have been mentioned under this Act in the original requisition.

Orders
after
hearing
objection.

518. If the person making such objection is present at the office of the Commissioners, the said order shall be explained to him orally ; and if such order cannot be so explained, notice of such order shall be served as provided in section 510 or section 511,

Order to
be
explained
orally.

[Ben. Act XV]

(Part III.—Chapter XXV.—Procedure.—Secs. 519—522.)

as the case may be, on the persons making the objection : and such explanation of, or service of, the notice of the said order shall be deemed to be a requisition duly made under this Act to execute the work or do the thing required.

Power of
Commissioners on
failure of
persons to
execute
work.

519. (1) If the person required to execute the work or to do the thing fails within the time specified in any requisition provided in sub-section (1) of section 514 other than a requisition under section 240 or section 241, or a requisition under Chapter XXI to begin to execute such work or to do such thing, and thereafter diligently to continue the same to the satisfaction of the Commissioners, until it is completed, the Commissioners or any person authorized by them in this behalf, may, after giving forty-eight hours' notice of their intention by a notification to be posted up on or near the spot, enter upon the land or building and perform all necessary acts for the execution of the work or doing of the thing required ; and the expenses thereby incurred shall be paid to the Commissioners by the owners or by the occupiers, if such requisition was addressed to the owners or to the occupiers respectively and by the owners and the occupiers, if such requisition was addressed to the owners and the occupiers.

(2) The Commissioners may take any measure, execute any work or cause anything to be done under this section or under the provisions of Chapter XXI, whether or not the person who has failed to comply with the requisition is liable to punishment, or has been prosecuted or sentenced to any punishment, under this Act or under any rule or by-laws made thereunder for such failure.

Appor-
tionment
of
expenses
among
owners.

520. Whenever any expenses incurred by the Commissioners are to be paid by the owners or by the occupiers of any land or building as provided in section 519, the Commissioners may, if there be more than one owner or more than one occupier, as the case may be, apportion the said expenses among such of the owners or among such of the occupiers as are known in such manner as to the Commissioners may seem fit.

Appor-
tionment
among
owners
and
occupiers.

521. Whenever any expenses incurred by the Commissioners are to be paid by the owners and occupiers of any land or building as provided in section 519, the Commissioners may apportion the said expenses among the said owners and occupiers or such of them as are known in such manner as to the Commissioners may seem fit.

Recovery
by
occupier
of cost
of works
executed
at his
expense.

522. Whenever any works or any alterations and improvements of which the Commissioners are authorized by this Act to require the execution are executed by the occupier on the requisition of the Commissioners, or are executed by the Commissioners, and the cost thereof is recovered from the occupier, the cost thereof may, if the Commissioners certify that such cost ought to be borne by the owner, be deducted by such occupier from the next and following payments of his rent due or becoming due to such owner, or may be recovered by him in any court of competent jurisdiction.

of 1932.]

(Part III.—Chapter XXV.—Procedure.—Secs. 523—525.)

Page 531—

In section 523, for the words, brackets, letter and figures "clause (c) of sub-section (1) of section 259", substitute the words, brackets, letters and figures "sub-section (4) of section 258, clause (c) of sub-section (1) or sub-section (2) of section 259 or clause (d) of sub-section (1) of section 263".

use (c) of sub-sections, the costs thereof n liable to pay said person is order the cost cipal Fund.

Recovery of costs by instalments or its remission in cases of poverty.

(Substituted by West Ben. Act VII of 1969, section 11.)

[No. 6, dated the 1st May, 1970.]

rolls, fees or other moneys due under this Act to the Commissioners of any municipality may be recovered in the manner provided in sections 155 to 162 (both inclusive).

Recovery of moneys due to the Commissioners.

525. (1) If money be due under this Act in respect of any holding from the owner thereof, on account of any tax, expenses or charges recoverable under this Act, and if the owner of such holding is unknown or the ownership thereof is disputed, the Commissioners may publish twice, at an interval of three months, a notification of sale of such holding and after the expiry of not less than three months from the date of the last publication, unless the amount recoverable be paid, may sell such holding to the highest bidder, who shall, at the time of sale, deposit the full amount of the purchase-money.

Power to sell un-claimed holdings for money due.

(2) After deducting the amount due to the Commissioners as aforesaid, the surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of such Commissioners or in a court of competent jurisdiction.

(3) Any person may pay the amount due at any time before the completion of the sale, and may recover such amount by a suit in a court of competent jurisdiction from any person beneficially interested in such property.

¹(4) Where a holding has been sold under sub-section (1), any person, either owning such holding or having an interest therein by virtue of a title acquired before such sale, may within thirty days from the date of sale apply to the Commissioners to have the sale set aside on his depositing with the Commissioners—

- (a) for payment to the purchaser, a sum equal to five per cent. of the purchase money, and
- (b) for payment to the Commissioners, the amount specified in the notification of sale as that for the recovery of which the sale was ordered, less any amount which, since the date of such notification, has been received by the Commissioners.

¹Sub-sections (4), (5) and (6) were added by sec. 51 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

(Part III.—Chapter XXV.—Procedure.—Secs. 526—529.)

¹(5) Where an application along with the deposit mentioned has been made under sub-section (4), the Commissioners at a meeting shall set aside the sale and the amount paid by the auction purchaser together with five *per cent.* thereof shall be refunded to him.

¹(6) No sale shall be confirmed except after thirty days from the date of the sale.

Sale of
materials.

526. (1) The materials of anything which shall have been pulled down or removed by the Commissioners under the provisions of sections 237, 364, 366, 454 or sub-section (2) of section 514, may be sold by the Commissioners, and the proceeds of such sale may be applied, so far as the same will extend to the payment of the expenses incurred.

(2) The surplus sale-proceeds (if any) shall be credited to the Municipal Fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a Court of competent jurisdiction.

Power to
enter upon
possession
of houses
repaired.

527. If the Commissioners have under the provisions of this Act caused any repairs to be made to any building or other structure, and if such building or other structure be unoccupied, the Commissioners may enter upon possession of the same, and may retain possession thereof until the sum expended by them on the repairs be paid to them.

Damage to
municipal
property
how made
good.

528. If through any act, neglect or default, on account whereof any person shall have incurred any penalty imposed by or under this Act, any damage to the property of the Commissioners shall have been committed by such person he shall be liable to make good such damage as well as to pay such penalty and the amount of damage shall, in case of dispute be determined by the Magistrate by whom the person incurring such penalty is convicted, and on non-payment of such damage on demand the same shall be levied by distress, and such Magistrate shall issue his warrant accordingly.

Relief to
agents and
trustees.

529. (1) Whenever any person, by reason of his—

(a) receiving the rent of immovable property as a receiver, agent or trustee, or

(b) being as a receiver, agent or trustee the person who would receive the rent if the property were let to a tenant,

would, under this Act or under any rule or by-law made thereunder, be bound to discharge any obligation imposed thereby on the owner of the property and for the discharge of which money is required, and such person has not in his hands funds belonging or payable to the owner sufficient for the purpose, he shall, within a reasonable time from the service upon him of any notice from the Commissioners in this behalf requiring him to discharge the said obligation, be bound to apply to a court of competent jurisdiction for leave to raise the necessary funds or for such other directions in relation thereto as the circumstances of the case may require.

¹See foot-note 2 on page 531, *ante*.

of 1932.]

(Part III.—Chapter XXV.—Procedure.—Secs. 529A, 530.)

(2) Any receiver, agent or trustee who fails to apply to the court under sub-section (1) shall be deemed to be personally liable to discharge the said obligation.

Appeals.

¹529A. (1) Any person aggrieved by any entry in or omission from the final electoral roll published under section 21 may, within fifteen days from the date of publication of such roll, appeal to the District Magistrate and if ²[on such appeal the District Magistrate or any other officer authorised by him to hear the appeal] directs any modification or addition to be made in such roll, the roll shall be amended accordingly and the amendment so made shall be published in the same manner as the final roll.

Appeals regarding electoral roll.

(2) No entry in or omission from a final electoral roll published under section 21 shall be liable to be called in question otherwise than by such appeal.

530. (1) Any person aggrieved by any prohibition, notice or order, made by the Commissioners under the powers conferred upon them by sub-section (3) of section 140, section 176, sub-section (2) of section 218, sub-section (1) of section 219, sub-section (1) of section 228, clause (b) of sub-section (1) of section 240, sub-section (1) of section 241, clause (b) of sub-section (2) of section 252, clauses (ii) and (iii) of section 254, sub-section (1) of section 258, section 259, section 261, section 263, sub-section (1) of section 264, section 309, sub-section (2) of section 341, section 343, section 348, section 349, section 356, section 357, sub-section (1) of section 364, section 368, section 372, sub-section (2) of section 410, section 411, section 418, section 420, section 423, section 520 and section 521 may, within thirty days, from the date of such prohibition, notice or order, appeal to the Commissioners, and every such appeal shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Commissioners at a meeting, and no such prohibition, notice or order shall be liable to be called in question otherwise than by such appeal :

Appeals from certain orders of the Commissioners.

Provided that the prohibition, notice or order shall not be modified or set aside or confirmed until the appellant and the Commissioners have had reasonable opportunity of being heard.

(2) The appellate authority may, for sufficient cause, extend the period allowed by sub-section (1) of this section for appeal.

(3) Except on appeals from decisions or orders under sub-section (3) of section 140, section 372, section 418, section 420, section 423, section 520 and section 521, the order of the appellate authority confirming, setting aside or modifying the prohibition, notice or order appealed from shall be final.

¹Section 529A was inserted by sec. 43 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

²These words were substituted for the words "the District Magistrate on such appeal" by sec. 52 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

(Part III.—Chapter XXV.—Procedure.—Secs. 531—534.)

Appeals
from orders
refusing
license
under this
Act.

531. Any person aggrieved by an order refusing a license required under this Act may, notwithstanding anything contained elsewhere in this Act, within thirty days, appeal to the ¹[State Government] whose decision shall be final and shall not be questioned in any court.

Prosecutions.

Power of
Commissioners to
direct
prosecu-
tion for
public
nuisance,
etc.

532. The Commissioners may direct any prosecution for any public nuisance, and may order proceedings to be taken for the recovery of any penalties under this Act or rules or by-laws made thereunder and for the punishment of any persons offending against the same, and may order the expenses of such prosecution or other proceedings to be paid out of the Municipal Fund.

Sanction
and limi-
tation for
prosecution
under this
Act.

533. No prosecution for an offence under this Act or any rule or by-law made in pursuance thereof shall be instituted without the order or consent of the Commissioners, and no such prosecution shall be instituted except within six months next after the commission of such offence, unless the offence is continuous in its nature, in which case a prosecution may be instituted within six months of the date on which the commission or existence of the offence was first brought to the notice of the Chairman :

Provided that the failure to take out any license under this Act shall be deemed to be a continuing offence until the expiration of the period for which such license is required to be taken out.

Police-
officer to
supply
informa-
tion to and
co-operate
with and
assist
Commis-
sioners
and muni-
cipal
officers and
servants.

²533A. It shall be the duty of every police-officer in a municipality—

- (a) to communicate without delay to the municipal office any information which he receives of a design to commit or of the commission of any offence against this Act or any rule or by-law made thereunder, and
- (b) to co-operate with and assist the Commissioners or any municipal officer or servant reasonably demanding his aid for the lawful exercise of any power vesting in the Commissioners or such municipal officer or servant under this Act or any rule or by-law made thereunder.

Police-
officer to
arrest
persons
refusing to
give name
and
residence.

534. (1) When any person, in the presence of a police-officer commits, or is accused of committing, any offence, under this Act or any rule or by-law made in pursuance thereof and refuses, on demand of a police-officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall within twenty-four hours from the arrest, be forwarded to the nearest

¹ See foot-note 2 on page 297, *ante*.

² Section 533A was inserted by sec. 53 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

of 1932.]

(Part III.—Chapter XXV.—Procedure.—Secs. 535, 536.)

Magistrate, unless before the expiration of that time his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate, if so required.

(2) Upon the recommendation of the Commissioners any servant of the Commissioners in receipt of a salary of not less than twenty-five rupees *per mensem*, when empowered in that behalf by a general or special order of the District Magistrate, may exercise the powers of a police-officer under this section.

Suits.

535. (1) No suit or other legal proceeding shall be brought against the Commissioners of any municipality or any of their agents, officers or servants, or any person acting under their direction, for any act purporting to be done under this Act or any rule or by-law made thereunder until the expiration of one month next after notice in writing has been delivered or left at the office of such Commissioners and also (if the suit or proceeding is intended to be brought against any officer or servant of the said Commissioners or any person acting under their direction) at the place of abode of the person against whom such suit or proceeding is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit or proceeding ;

Notice of
suits
against
Commis-
sioners.

and unless such notice be proved, the court shall find for the defendant.

(2) Every such suit or proceeding shall be commenced within six months next after the accrual of the cause of action, and not afterwards.

(3) When the suit or proceeding is for damages, tender of amends, if any, made before the suit or proceeding is brought may, in lieu of or in addition to any other plea, be pleaded. If the suit or proceeding was commenced after the tender or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, the defendant shall be entitled to full costs of the suit or proceeding after the tender or payment.

536. (1) Any owner or occupier of land or of a building may contest his liability to pay any expenses or fees under sections 519 to 521 or may contest the amount which he has been called upon to pay in a civil court of competent jurisdiction :

Contest of
liability
in civil
courts.

Provided that the fact of such action having been instituted shall be no bar to the recovery of the said amount, in the manner provided by section 524.

(2) Where any damages or compensation other than compensation payable under section 98 are by this Act directed to be paid by the Commissioners the amount, and if necessary, the apportionment of the same, shall, in case of dispute, except as otherwise expressly provided in this Act, be ascertained and determined by a civil court of competent jurisdiction.

[Ben. Act XV

(Part III.—Chapter XXVI.—Savings.—Secs. 537—541.)

CHAPTER XXVI.

Savings.

Savings.

537. No assessment list or other list, notice, bill or other such document specifying or purporting to specify, with reference to any tax, rate, toll, charge, rent or fee, any person, property, thing or circumstance shall be invalid by reason only of a mistake in the name, residence, place of business or occupation of the person or in the description of the property, thing or circumstance, or by reason of any mere clerical error or defect of form; and it shall be sufficient that the person, property, thing or circumstance is described sufficiently for the purpose of identification, and it shall not be necessary to name the owner or occupier of any property liable in respect of a tax.

Distress
or sale not
unlawful
for want
of form.

538. No distress or sale made under this Act shall be deemed unlawful nor shall any person making the same be deemed a trespasser on account of any error, defect or want of form in the bill, notice, summons, warrant of distress, inventory or other proceeding relating thereto, nor shall such person be deemed a trespasser from the commencement on account of any irregularity afterwards committed by him, but all persons aggrieved by such irregularity may recover full satisfaction for any special damage sustained by them in any court of competent jurisdiction, subject to the provisions of section 535.

Who to be
deemed
owner or
occupier
where
there are
gradations
of owners
or
occupiers.

539. Whenever any right is conferred or duty imposed by or under this Act, or by any rule or by-law made thereunder on the owner or occupier of any premises, and in consequence of there being gradations of owners or occupiers, doubt arises as to who is the owner or occupier entitled to exercise such right or bound to perform such duty, the Commissioners may, after due inquiry, determine from time to time which of such owners or occupiers shall be deemed to be so entitled or bound.

Commis-
sioners,
municipal
officers,
etc., to
be deemed
public
servants.

540. Every Commissioner, every municipal officer and servant, every person employed for the collection of any municipal rate, tax, or fee and every person authorized by the Chairman or the Commissioners at a meeting or otherwise to do any act under this Act or any rule or by-law made thereunder shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code; and in the definition of legal remuneration in section 161 of that Code, the word Government shall, for the purposes of this section, be deemed to include a body of Municipal Commissioners.

Act XLV
of 1860.

Prohibition
of ob-
struction of
municipal
contractors.

541. No person shall obstruct or molest any person (not being a person referred to in section 540) with whom the Commissioners have entered into a contract, in the performance or execution by such person of his duty or of anything which he is empowered or required to do by virtue, or in consequence of this Act or any rule or by-law made thereunder.

of 1932.]

(Part III.—Chapter XXVI.—Savings.—Chapter XXVII.—
Delegation of powers and control.—Secs. 542—544.)

542. No person shall without the permission of the Commissioners remove any boundary mark set up under the provisions of this Act or any mark set up for the purpose of indicating any level, measurement or direction necessary to the execution of works authorized by this Act or by any rule or by-law made thereunder.

Prohibition of removal of mark.

Ben. Act
VI of
1870.

543. Notwithstanding anything contained in section 3 of the Village Chaukidari Act, 1870, the provisions of Part II of the said Act, relating to *chaukidari chakran* lands, shall be applicable to all such lands which have been assigned before the commencement of the said Act for the benefit of any part of a municipality, and all duties and functions which the *panchayat* of a village or any member thereof is required to discharge under the provisions of the said Part shall be discharged, and all powers which the *panchayat* of a village or any member thereof is authorized to exercise under the said Part shall be exercised by the Commissioners of such municipality, and the proceeds of the assessment on such lands made under the said Part shall be paid into the Municipal Fund; and shall be available for the purposes of such fund.

Chaukidari chakran lands.

543A. Whenever it is provided under this Act that the State Government may take action after considering the views of the Commissioners at a meeting, or shall not take action except after considering such views, if the Commissioners at a meeting fail to furnish the State Government with their views within such time or such extended time as the State Government may fix in that behalf, the State Government may proceed to take action in each case as if it were bound to take action after considering the views of the Commissioners as aforesaid.

Power of State Government to proceed without consideration of views of the Commissioners at a meeting in case of default.

CHAPTER XXVII.

Delegation of powers and control.

Delegation.

544. The ²[State Government] may, with regard to municipalities generally or to any municipality or class of municipalities and subject to such conditions or restrictions as it may deem fit to impose, by notification delegate to the Commissioner of the Division any of the powers vested in the ²[State Government] by this Act, except any power to make rules and the powers conferred by sections 6, 8, 13, 15, 17, 67, 135, second proviso, 285, 548, 549, 550, 552 and 553.

Delegation of powers by the State Government.

¹Section 543A was inserted by, sec. 54 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²See foot-note 2 on page 297, *ante*.

[Ben. Act XV

(Part III.—Chapter XXVII.—Delegation of powers and control.—
Secs. 544A—545.)

Director
of Local
Bodies.

¹544A. (1) The State Government may, if it thinks fit, appoint a Director of Local Bodies to exercise the powers conferred on or delegated under this Act to the Commissioner of the Division and upon such appointment the Commissioner shall cease to exercise the said powers.

(2) When the Director mentioned in sub-section (1) is appointed, the State Government may delegate to him any of the powers vested in the State Government as provided for in section 544 as if he were the Commissioner of the Division.

Inspector
of Local
Bodies.

¹544B. The State Government, if it thinks fit, may, by notification, appoint one or more Inspector or Inspectors of Local Bodies to exercise such of the powers and perform such of the functions referred to in sub-section (1) of section 545 as may be prescribed from time to time.

Control.

Supervi-
sion by
Commis-
sioner,
District
Magistrate,
etc.

545. ²[(1)] The Commissioner of the Division or the District Magistrate or the Magistrate in charge of a subdivision when he is not a member of the municipality ³*, within the limits of his division or district or subdivision, as the case may be ⁴[or a Magistrate of the first class authorised in writing by any one of them, may],—

(a) inspect, or cause to be inspected, any immovable property used or occupied by the Commissioners or any work in progress under the direction of the Commissioners or of a joint committee ;

⁵(b) inspect or examine any department of a municipality or any officer, service, work or thing under the control of the Commissioners or of such Committee ;

⁶(c) for the purpose of inspection or examination, require the Commissioners or such Committee—

(i) to produce any book, record, correspondence, plan or other document,

(ii) to furnish any return, plan, estimate, statement, accounts or statistics, or

(iii) to furnish or obtain any report ;

¹Sections 544A and 544B were inserted by sec. 55 of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²Section 545 was renumbered as sub-section (1) of that section, by sec. 56(1), *ibid.*

³The word "may" was omitted by sec. 56(1), (a), *ibid.*

⁴These words were inserted by sec. 56(1) (b), *ibid.*

⁵This clause (b) was substituted for the original clause (b), by sec. 56(1)(c), *ibid.*

⁶This clause (c) was substituted for the original clause (c) by sec. 56(1)(d), *ibid.*

of 1932.]

(Part III.—Chapter XXVII.—*Delegation of powers and control.*—*Secs. 545A—548.*)

(d) record in writing for the consideration of the Commissioners or of such Committee, any observations he thinks proper in regard to the proceedings or duties of the Commissioners or the committee.

¹(2) When a requisition is made under clause (c) of sub-section (1), the Commissioners or the Committee, as the case may be, shall comply with such requisition.

²545A. The State Government may at any time—

- (a) call for any document in the possession or under the control of the Commissioners ;
- (b) require the Commissioners to furnish any return, plan, estimate, statement, account or statistics ;
- (c) require the Commissioners to furnish any information or report on any municipal matter.

Power of the State Government to call for documents, returns or information from the Commissioners.

546. A work, or institution, constructed or maintained, in whole or part, at the expense of the Commissioners and all registers, books, accounts or other documents relating thereto shall, at all times, be open to inspection by such officers as the ³[State Government] may appoint in this behalf.

Inspection of municipal works and institutions by Government officers.

547. The Chief Engineer, Public Health Department, the Director of Public Health or Deputy or Assistant Director of Public Health, the Civil Surgeon of the district, the Executive Engineer, the Inspector of Schools, and any other officer specially authorised by the ⁴[State Government] in this behalf shall be entitled to attend a meeting of the Commissioners to address the Commissioners on any matter affecting their respective departments.

Right of certain officers to attend and speak at meetings.

548. (1) The ⁵[State Government] may by order in writing annul any proceeding which it considers not to be in conformity with law and with the rules in force thereunder and may do all things necessary to secure such conformity, or may suspend any resolution which it considers likely to lead to a serious breach of the peace, or to cause serious injury or annoyance to the public, or to any class or body of persons.

Power to suspend action under Act.

(2) The Commissioner of the Division or the District Magistrate may, by order in writing, suspend within the limits of the division or district (as the case may be) the execution of any resolution or order of the Commissioners, or prohibit the doing within those limits of any act which is about to be done, or is being done, in pursuance of, or under cover of, this Act or any rule or by-law made thereunder, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law, or the

¹Sub-section (2) was added by sec. 56(2) of the Bengal Municipal (Amendment) Act, 1955 (West Ben. Act XXVII of 1955).

²Section 545A was inserted by sec. 57, *ibid.*

³See foot-note 2 on page 297, *ante*.

[Ben. Act XV

(Part III.—Chapter XXVII.—Delegation of powers and control.—
Secs. 549, 550.)

execution of the resolution or order, or the doing of the act, is likely to lead to serious breach of the peace, or to cause serious injury or annoyance to the public, or to any class or body of persons.

(3) When the Commissioner of the Division or the District Magistrate makes any order under this section, he shall forthwith forward a copy thereof, with a statement of his reason for making it, to the ¹[State Government], who may thereupon rescind the order or direct that it continue in force with or without modification, permanently or for such period as it thinks fit.

Powers of
State
Govern-
ment in
case of
default.

549. (1) If at any time it appears to the ¹[State Government], that the Commissioners have made default in performing any duty imposed on them by or under this or any other Act, the ¹[State Government] may, by an order in writing, fix a time for the performance of that duty.

(2) If such duty is not performed within the period so fixed, the ¹[State Government] may appoint the District Magistrate to perform it, and may direct that the expense of performing it shall be paid, within such time as it may fix, to the Magistrate from the Municipal Fund.

Power of
State
Govern-
ment to
supersede
a depart-
ment of a
municipal-
ity.

550. (1) If in the opinion of the ¹[State Government] the Commissioners—

(i) have shewn their incompetency to perform, or have persistently made default in the performance of the duties imposed on them by or under this Act or by any other law ; or

(ii) have exceeded or abused their powers, in respect of any department under their control, the ¹[State Government] may, except in the case of any emergency of which the ¹[State Government] shall be the sole judge, by written order, direct the Commissioners within a period to be specified in the order to show cause to the satisfaction of the ¹[State Government] against the making of an appointment referred to in sub-section (2).

(2) If within the period fixed by any order issued under sub-section (1) cause has not been shown to the satisfaction of the ¹[State Government], it may by an order published, with the reasons for making it, in the ²[Official Gazette], appoint a suitable person to be in charge of the department for a period to be specified in the order ³[so published] who shall during such period exercise all the powers and perform all the duties of the Chairman and of the Commissioners whether at a meeting or otherwise in respect of that department.

¹See foot-note 2 on page 297, *ante*.

²See foot-note 2 on page 301, *ante*.

³These words were inserted by sec. 44 of the Bengal Municipal (Amendment) Act, 1936 (Ben. Act XI of 1936).

of 1932.]

*(Part III.—Chapter XXVII.—Delegation of powers and control.—
Secs. 551, 552.)*

(3) The ¹[State Government] in making such order shall direct that the expense of performing the duties of the department together with such remuneration as the ¹[State Government] may allow from time to time to such person shall be paid within such time as it may fix from the Municipal Fund.

(4) If any dispute arises as to whether any particular power or duty relates to the department made over to such officer the matter shall be referred to the District Magistrate whose decision shall be final.

551. If the expense is not paid under sub-section (2) of section 549 or under sub-section (3) of section 550 the District Magistrate, with the previous sanction of the ¹[State Government], may make an order directing the person having the custody of the balance of the Municipal Fund to pay the expense, or so much thereof as is from time to time payable from the balance, in priority to any other charges against the same and such person shall pay accordingly.

552. If, in the opinion of the ¹[State Government], the Commissioners have shewn their incompetency to perform or have persistently made default in the performance of the duties imposed on them by or under this Act or by any other law, or have exceeded or abused their powers, the ¹[State Government] may, by an order published, with the reasons for making it, in the ²[*Official Gazette*], direct that a fresh general election shall be held * * * immediately of persons to be Commissioners; and from the date on which the results of such new election and appointment of Commissioners ⁴[under section 26 (if any)] are published in accordance with the provisions of section 50 the former Commissioners shall, unless they are re-elected or re-appointed ⁵[for the purpose of section 26], vacate their offices :

Provided that the tenure of office of the Chairman of the outgoing body of Commissioners shall continue until that office is vacated in the manner provided by section 59.

¹See foot-note 2 on page 297, *ante*.

²See foot-note 2 on page 301, *ante*.

³The words "and fresh appointment shall be made" were omitted by sec. 10 (a) of the Bengal Municipal (West Bengal Amendment) Act, 1947 (West Ben. Act XI of 1947).

⁴These words, figures and brackets were inserted by sec. 10(b), *ibid*.

⁵These words and figures were added by sec. 10(c), *ibid*.

(Part III.—Chapter XXVII.—Delegation of powers and control.—
Secs. 553, 554.)

Power to
supersede
Commissioners in
case of
incompetency,
default
or abuse
of powers.

553. ¹[(1)] If, in the opinion of the ²[State Government], the Commissioners have shewn their incompetency to perform, or have persistently made default in the performance of the duties imposed on them by or under this Act or by any other law, or have exceeded or abused their powers, the ²[State Government] may, by an order published with the reasons for making it, in the ³[Official Gazette], declare such Commissioners to be incompetent, or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order :

Provided that except in case of misappropriation of municipal funds or persistent default in the performance of duties by the Commissioners the ²[State Government] shall not ordinarily exercise power under this section until action has been taken under section 552.

¹(2) The State Government may, if it considers it necessary so to do, by order extend or modify the period of supersession.

Consequences of
supersession of
the body
of Commissioners
or of failure
to assume
office or
of setting
aside of
election.

⁴554. (1) (i) When an order of supersession has been passed under section 553, then with effect from the date of the order, or

(ii) when—

(a) the Commissioners elected at a general election cannot, for any reason, assume office or are restrained by order of a Court from functioning, or

(b) a general election is set aside by a Court otherwise than under the provisions of this Act, then with effect from such date as the State Government may, by order, specify,—

(aa) all the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners ;

(bb) all the powers and duties which may, under the provisions of this Act or any other Act or any Ordinance or any Regulation or any rule, by-law, order, notification or subsidiary legislation made under the provisions of this Act or such Regulation, be exercised and performed by the Chairman and by the Commissioners whether at a meeting or otherwise, shall be exercised and performed by such person or persons as the State Government may direct :

¹Section 553 was re-numbered as sub-section (1) of that section, and after that sub section as so re-numbered sub-section (2) was added by sec. 7 of the Bengal Municipal (Amendment) Act, 1961 (West Ben. Act XVIII of 1961).

²See foot-note 2 on page 297, *ante*.

³See foot-note 2 on page 301, *ante*.

⁴Section 554 was substituted for the original section by sec. 8 of the Bengal Municipal (Amendment) Act, 1961 (West Ben. Act XVIII of 1961).

of 1932.]

(Part III.—Chapter XXVII.—Delegation of powers and control.—
Secs. 555—557.)

Provided that when the State Government directs more than one person to exercise any powers and perform any duties it may, by order, allocate such powers and duties among the several persons appointed in such manner as it thinks fit :

Provided further that the State Government shall fix the remuneration of such person or persons, and may direct that such remuneration shall, in each case, be paid from the Municipal Fund ;

(cc) all property vested in such Commissioners shall vest in the State Government.

(2) The State Government may, at any time,—

(a) by order reconstitute the body of municipal Commissioners by appointment of all the Commissioners for such period as may be specified in the order, or

(b) order the holding of a general election for reconstitution of the body of municipal Commissioners,

and on such reconstitution the provisions of sub-section (1) will cease to have effect with effect from the date of the first meeting of the newly appointed or elected Commissioners, as the case may be, at which a quorum is present.

555. Where specific provision is made in any section of this Act for its being extended by the ¹[State Government] to any municipality, the ¹[State Government] may, at any time, by order, withdraw any section it may thus have extended to any municipality from operation in such municipality, and such section shall cease to have effect in the said municipality from the date of such order.

Withdrawal of sections expressly extended by the State Government.

556. If any dispute arising out of the operation of this Act for the decision of which this Act does not otherwise provide arises between the Commissioners of any municipality constituted, under this Act, and any other local authority, such dispute shall be referred to the ¹[State Government] whose decision shall be final and shall not be questioned in any court.

Disputes.

557. (1) The ¹[State Government] may by rules alter, add to, or cancel any rule or parts thereof or may by notification alter, add, or cancel any entry contained in Schedules III, IV, VII, VIII and IX to this Act.

Power to State Government to make rules for the amendment of certain schedules.

(2) All references in this Act to any schedule which may be amended under sub-section (1) or under sub-section (2) of section 17, or sub-section (4) of section 124 shall be construed as references to such schedules as for the time being amended.

¹See foot-note 2 on page 297, ante.

(Schedules I—VI.)

SCHEDULE I.

[Enactments repealed.]

[Rep. by Sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).]

SCHEDULE II.

Silos:

Page 544—

Conveyor gantries ;

After Schedule III, insert the following Schedule, namely:—

“SCHEDULE IIIA.

[See section 128 (3).]

Parts of plant or of combination of plant and machinery in certain cases not to be excluded in calculating the annual value of any holding.

The following parts of a plant or a combination of plant and machinery whenever and only to such extent as any such part is, or is in the nature of, a building or structure:—

Acid Concentrators;

Bins and Hoppers;

Blast Furnaces;

Bridges or
used in
part
structure:—
platforms and

Burners, Forges, Furnaces, Kilns, Ovens and Stoves;

Chambers for—

Absorption of gases or fumes,

Aerographing and Spraying,

Bleaching,

Chemical Reaction,

Conditioning or Treatment,

Cooling,

Drying,

Dust or Fume Collecting,

Fibre separation (Wool Carbonising),

Fuming,

Impregnating,

Refrigerating,

Regenerating,

Sandblasting,

Sterilising,

Sulphuric Acid ;

Chimneys ;

Cooking Ovens ;

Lenses and Scrubbers—

of 1932.]

(Schedule IV.)

and there shall be paid half-yearly for the same a tax not exceeding the amount mentioned in that behalf in the third column of the table :—

Serial No.	Classes.	Maximum half-yearly tax in rupees.
------------	----------	------------------------------------

8

Rs.

¹[Company or association or body of individuals which exercises any profession, trade or calling whatsoever] for profit or as a benefit society ²[not being a registered co-operative society] of which the paid-up capital is

Rs. 545—

In the table in Schedule IV,—

- | | | |
|---|------------|------------------|
| (1) in Serial No. 1, in column 3 under the heading "Maximum half-yearly tax in rupees", for the figures "100", "50" and "20" occurring respectively against items (b), (c) and (d) of the entry in column 2 under the heading "Classes", substitute the figures "125", "75" and "25"; | an | 200
100
50 |
| (2) in Serial No. 3, for the item "(a) in respect of whose income, income-tax is payable" in column 2 under the heading "Classes", and the corresponding entry "10" in column 3 under the heading "Maximum half-yearly tax in rupees", substitute the following, namely:— | amt
nt, | 20
125 |
| "(a) in respect of whose income, income-tax is payable— | | |
| (i) when the income exceeds Rs. 10,000 | 20 | |
| (ii) when the income does not exceed Rs. 10,000 | 10". | |

(Substituted by West Ben. Act VII of 1969, section 13.)

[No. 6. dated the 1st May, 1970.]

business within the municipality" by notification No. 3854/M. IT—88/56, dated the 16th December, 1940, published in the *Calcutta Gazette* of 1940, Pt. I, page 3742.

²There words were inserted by Notification No. 918M., dated the 18th February, 1937, published in the *Calcutta Gazette*, dated the 25th February, 1937, Pt. I, page 372.

³Serial No. 1(a) was inserted by notification No. 3854/M. IT—88/56, dated 10. 6. 57, published in the *Calcutta Gazette* of 1957, Pt. I, page 2107.

⁴The word "State" was omitted by notification No. 6021/M. IT—24/58, dated 23. 7. 59, published in the *Calcutta Gazette* of 1959, Pt. I, page 2641.

⁵The entries under serial No. 2 were substituted for the entries under serial Nos. 2 and 4 (as amended by notification No. 1268 M., dated 26. 5. 45, published in the *Calcutta Gazette* of 1945, Pt. I, page 916) and the corresponding entries in column 2 and 3 of the schedule by notification No. M. IT—8/52, dated the 3rd January, 1953, published in the *Calcutta Gazette*, dated the 15th January, 1953, Pt. I, page 119.

⁶Substituted for the words "Merchant, banker" by notification No. 3584/M. IT—88/56, dated 10. 6. 57, published in the *Calcutta Gazette*, of 1957, Pt. I, page 2107.

(Schedule V.)

Serial No.	Classes.	Maximum half-yearly tax in rupees
1	2	3
	stall keeper, eating-house-keeper, whose place of business is valued under this Act at not less than—	
	(a) Rs. 1,000 per mensem	125
	(b) Rs. 500 per mensem	100
	(c) Rs. 250 per mensem	75
	(d) Rs. 100 per mensem	50
	(e) Rs. 50 per mensem	25
	(f) Rs. 25 per mensem	12
	(g) Rs. 12 per mensem	4
	(h) Rs. 6 per mensem	2
	(i) Rs. 3 per mensem	1
¹ [8]	Commission agent, broker not included in serial No. 2, architect, engineer, contractor, medical practitioner, dentist, barrister, legal practitioner—	
	(a) in respect of whose income, income-tax is payable.	10
	(b) in respect of whose income no income-tax is payable.	5
**		
² 5	Itinerant vendors hawking goods for sale ...	1

SCHEDULE V.

(See section 124.)

Municipalities in which the rate on holdings may be fixed at fifteen per cent.

Municipality.

⁴Howrah.

5 *

⁶Kurseong.

⁶Darjeeling.

5 *

¹Serial No. "3" was substituted for serial No. "4" by sec. 12 of the Bengal Municipal (Amendment) Act, 1933 (Ben. Act IX of 1933).

²As to serial No. 4, see footnote 8 on page 545, ante.

³Serial No. 5 was inserted by notification No. M. 3L—4/51, dated the 16th January, 1952, published in the *Calcutta Gazette*, dated the 31st January, 1952, Pt. I, page 854.

⁴As the chapter on Taxation of the Calcutta Municipal Act has been extended to the Howrah Municipality by the Local Self-Government Department notification No. 260M, dated the 18th January, 1932, the name of the Howrah Municipality may be taken to have been excluded from this Schedule.

⁵The words "Dacca" and "Chittagong" were omitted by Article 8(1) of, and the Schedule to, the Indian Independence (Adaptation of Bengal and

Page 546—

*Delete footnote 6.

the words of the February, 1900, published in the *Calcutta Gazette* of the 5th March, 1936, Pt. I, pages 487-488,

of 1932.]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 1—8.)

SCHEDULE VI.

(See sections 312, 313, 317, 318, 319, 321, 322, 326, 327, 328, 329, 330 and 364.)

Rules as to the use of building-sites and the execution of building work.

SECTION A.—*Building-sites.*

1. No piece of land shall be used as a building-site unless the Chairman is satisfied—

- (a) that the site is fit to be built upon from sanitary and engineering points of view ;
- (b) that it is well-drained or is capable of being well-drained and that the owner will take the necessary steps to drain it ; and
- (c) that where the site is within thirty feet of a tank, the owner will take such measures as shall prevent any risk of the drainage from such building passing into the tank.

SECTION B.—*Buildings generally (other than huts).*

Part I.

2. Except with the written permission of the Chairman the foundation of buildings other than huts shall rest on natural ground.

3. The spread of the foundation shall be such that the pressure on the soil, taking into account the load on the floors and terrace roof (if any) shall not in any case exceed a maximum to be laid down by the Commissioners at a meeting with the approval of the ¹[State Government].

4. The depths of the foundation shall be such as the Chairman may approve.

5. The plinth of every such building, except in the case of motor garages and coach houses, shall be at least one foot six inches above the level of the centre of the nearest street.

6. The plinth of stables and cowsheds shall be at least one foot above such level.

7. The walls of every such building shall be constructed upon proper footings.

8. The outer walls of every such building shall be constructed of brick or other substance of a hard and incombustible nature.

¹ See foot-note 2 on page 297, *ante*.

[Ben. Act XV

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 9—20.)

9. The walls of every such building shall be properly bonded.

10. If such building has more than one storey, every wall shall be of such thickness as the Chairman may consider necessary to ensure safety, regard being had to the height of the building, the materials of which it is constructed and the purpose for which it is intended to be put.

11. The floors of every such building shall be so constructed as to carry safely the maximum load, the allowance for live-load not being less than fifty-six pounds per square foot.

12. Every beam and girder in such building shall be supported by a breadth of brickwork, stone or other solid substance sufficient to secure stability.

13. The bearing of every beam or girder of a wall shall not, without the written permission of the Chairman, be less than three-fourths of the thickness of such wall.

14. No timber or woodwork in such a building shall be placed—

(a) in any wall or chimney-breast nearer than nine inches to the inside of any flue, stove-pipe or chimney-opening, and

(b) under any chimney-opening within 15 inches from the upper surface of the hearth thereof.

15. Every terraced roof shall be constructed to carry such load, not being less than forty pounds per square foot, in addition to its own weight as may be approved by the Chairman.

PART II.

16. The lowest floor of every building erected or reconstructed from the ground level shall be constructed at such a level as shall permit of such building being effectually drained and of the drainage being led into an existing or proposed public drain.

17. No building shall be erected or raised to a greater height than sixty feet measured from the level of the centre of the street in front—

(a) in the case of pitched roof, up to the tie-beam of the roof, and

(b) in the case of a flat roof, up to the surface of the roof.

18. In the case of a pitched roof, the roof above that height shall rise at an angle of not more than forty-five degrees.

19. In the case of a flat roof, no parapet shall be constructed more than three feet above the maximum height specified in rule.17.

20. If the width of the street does not exceed twenty-six feet, such building shall not be erected or raised to a height greater than one and a half times the width of such street.

of 1932.]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 21—30.)

21. If the width of the street exceeds twenty-six feet, but does not exceed forty feet, such building shall not be erected or raised to a height greater than forty feet.

22. If the width of the street exceeds forty feet, such building shall not be erected or raised to a height greater than the width of such streets.

22. Where such building abuts upon more than one street, its height shall be regulated by the wider of such streets so far as it abuts upon such wider street, and also to a distance of eighty feet from such wider street so far as it abuts upon the narrower of such streets.

23. If the face of such building is set back from the street at any height not exceeding the height specified in rule 17, such building may be erected or raised to a height greater than that so specified, but not so that any portion of such building shall intersect any of a series of imaginary straight lines drawn from the line of set-back, in the direction of the portion set-back, at an angle of forty-five degrees with the horizontal.

25. Notwithstanding anything contained in the foregoing rules any house which has been demolished may, within a period of two years, from the date of its demolition, be re-erected to a height not exceeding its original height, provided that the onus of proving the height of the original building prior to demolition shall lie upon the person applying for sanction to re-build.

26. Every interior courtyard shall be raised at least one foot above the level of the centre of the nearest street, so as to admit of easy drainage into such street.

27. Every house, if this in the opinion of the Chairman be practicable, shall be provided with a secondary means of egress in case of fire.

With respect of roofs, floors and staircases.

28. The flat and roof of such building, and every turret, dormer, lantern-light, skylight, or other erection placed on the flat or roof of such building shall be externally covered with slates, tiles, metal, or other incombustible materials except as regards any door, door-frame, window or window-frame of any such turret, dormer, lantern-light, skylight or other erection.

29. In every new public building, the floor of every lobby, corridor, passage and landing which is not intended solely as a means of access to any private apartment, and all the supports of every such floor shall be constructed of stone or other incombustible or fire-resisting materials, and shall be of adequate strength.

30. Every staircase in a new building shall be properly constructed of sound and suitable materials, and securely fixed and shall be of adequate strength.

[Ben. Act XV]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 31—37.)

31. In every new public building every staircase which is not intended solely as a means of access to any private apartment shall be constructed of incombustible materials, and carried by supports of incombustible materials and shall be furnished on each side with a sufficient hand-rail, properly and securely fixed.

32. In every new public building every staircase which is intended solely as a means of access to any private apartments shall be provided with a sufficient hand-rail properly and securely fixed.

33. In every new building containing separate sets of chambers or offices or rooms constructed or intended or adapted to be tenanted by different persons, and which shall exceed fifty thousand feet in cubic content, the floor or every lobby, corridor, passage and landing and every flight of stairs in any staircase in such building, and all the supports of every such floor and flight of stairs shall be constructed of stone or other fire-resisting material, and shall be of adequate strength and the principal staircase and landings of such building shall be enclosed with walls, not less than nine inches in thickness, constructed of good, hard, sound, well-burnt bricks, stone, or other hard and incombustible materials, properly bonded and solidly put together.

SECTION C.—Dwelling houses and other domestic buildings (other than huts).

34. The total area covered by all the buildings on any site used for a dwelling house shall not exceed two-thirds of the total area of the site, and the area so covered shall form part of the site, and no building or part of a building shall be erected so as to encroach upon the area so left vacant.

35. There shall be at the back of every domestic building an open space—

- (a) extending along the entire width of the building ;
- (b) exclusively belonging to such building ;
- (c) free from any erection thereon above the level of the ground, except a water-closet, earth-closet, or ash-pit ; and
- (d) not less than ten feet in width from every part of the back of such building to the opposite boundary of the premises.

36. If the height of such building be not less than thirty feet, the width of such open space shall not be less than fifteen feet, and if such height exceed forty-five feet the width shall not be less than twenty-five feet.

37. This rule shall not apply where the back of a building abuts on a public square or street or a place dedicated to public use and not likely to be built upon not less than six feet in width, but in such cases, the height of the building shall nevertheless, in accordance with the provisions of rules 17 to 25, be regulated by the width of the public square, street or place on which it abuts.

of 1932.]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 38—41.)

38. For the purposes of rule 37, the back of a building shall be deemed to be that face of the building which is furthest from any street at the side of which the building is situated :

Provided that, where a building is situated at the side of more than one street, the back of the building shall, unless the Chairman otherwise direct, be deemed to be that face of the building which is furthest from the widest of such streets.

39. If any person desires to erect a domestic building upon a site which is irregular or is of such a nature that it is impracticable to provide an open space in the rear of the building of the dimensions prescribed by rule 35 or rule 36, the Chairman may relax the provisions of those rules :

Provided that—

(a) such open space shall be left as the Chairman may consider practicable, having regard to all the circumstances of the case, and

(b) not more than two-thirds of the total area of the site shall be occupied by buildings.

40. (1) If either side of a domestic building is not attached to the adjacent building, and if such side does not abut on a public square or street which is not less than six feet in width,

there shall be between the buildings an open space extending along the entire length of such side and forming part of the said domestic building :

Provided that attachment of any building to the adjacent building shall not be allowed (except with the permission of the Chairman) if either of the buildings is a dwelling house.

(2) The minimum distance across such space from every part of the said domestic building to the boundary line of the land or building immediately opposite such part shall be—

(a) six feet, if there is a building next to such boundary line or within two feet of it, or

(b) four feet, if there is an open space of two feet or more on either side of such boundary line :

Provided that, where there is a public street which is less than six feet wide by the side of the site, the owner may, by giving to the Commissioners free of charge such land as will make the street six feet wide, be exempted from leaving further side space under this rule.

41. Every room used or intended to be used for purposes of human habitation—

(a) shall be in every part not less than nine feet in height, measured from the floor to the underside of the beam on which the roof rests ;

[Ben. Act XV

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 42—45.)

(b) shall have a superficial area of not less than eighty square feet ; and

(c) shall be provided, for purposes of ventilation, with doors or windows opening directly into the external air or into an open verandah.

42. (1) Every building used or intended to be used for purposes of human habitation shall be so constructed that every room therein shall have at least one side abutting for the whole of its length (which shall, in no case, be less than eight feet) on an open space, either external or internal. The internal open space shall, in no case, be less than eight feet across in any direction. The external open space shall, in no case, be less than eight feet across in any direction, except when such open space abuts for the whole of its length on a street or other public space which is not less than fifteen feet across in any direction.

(2) A building shall not be held to contravene sub-rule (1) of this rule if one side of a room abuts on an internal or external verandah, provided that the verandah in its turn abuts for the whole of its length on an open space and that the width of such open space (not being less than eight feet) is double the width of the verandah.

(3) Every open space, external or internal, required by sub-rule (1) of this rule, shall be free and shall be kept free, from any erection thereon and shall be open to the sky.

(4) The side of every such room abutting on an external or internal open space or an external or internal verandah shall have at least one-fifth of its area occupied by doors, windows or ventilators, but, in no case, shall the area so occupied be less than twenty-four square feet. Where, in the opinion of the Chairman, it shall be considered necessary, additional ventilators of a type approved by the Chairman shall be provided in the remaining sides of such room. Such ventilators shall communicate directly with the open air.

SECTION D.—Applications for approval of sites for, and for permission to construct or re-construct, buildings, other than huts.

43. Every application for approval of a site for a building and for permission to execute the work of constructing or re-constructing such building shall be submitted in the form given in Form A attached to these rules (to be supplied by the Chairman free of charge).

44. Every such application shall be accompanied by a site-plan in duplicate drawn to a scale of not less than one-fiftieth of an inch to a foot.

45. Every such site-plan shall show—

(a) the boundaries of the site and of any contiguous land belonging to the owner thereof,

of 1932.]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 46, 47.)

- (b) the position of the site in relation to neighbouring streets,
- (c) the name of the street in which it is proposed to erect the building,
- (d) the position of the building, and of all other buildings (if any), which the applicant intends to erect upon his contiguous land referred to in clause (a), in relation to—
 - (i) the boundaries of the site, and in a case where the site has been partitioned the boundaries of the portion owned by the applicant and also the portions owned by the other owners, and
 - (ii) all adjacent streets, buildings and premises within a distance of forty feet of the site and of the contiguous land (if any), referred to in clause (a),
- (e) the means of access from the street to the building, and to all other buildings (if any), which the applicant intends to erect upon his contiguous land referred to in clause (a),
- (f) the position and approximate height and the number of stories of all other buildings within forty feet of the site,
- (g) the position and dimensions of proposed kitchens, staircases, urinals, drains, cesspools, stables, cattle-sheds, cow-houses, wells and other appurtenances of the buildings,
- (h) the free passage or way in front of the building,
- (i) the space to be left about the building to secure a free circulation of air, admission of light, and access for scavenging purposes,
- (j) the width of the street (if any) in front, and of the street (if any) at the rear of the building, and
- (k) such other particulars as may be required by the Commissioners.

46. Every application to construct or re-construct a building shall also be accompanied by a plan in duplicate of the proposed building showing both elevations and sections properly coloured and neatly and accurately drawn to a scale of not less than one-eighth of an inch to a foot.

47. Every such plan shall show—

- (a) the depth and width of the foundations of the building,
- (b) the level of the lowest floor of the building, and
- (c) the level of all courtyards and open spaces in the building or premises and the plinth level of buildings with reference to the level of the centre of the nearest street.

[Ben. Act XV]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 48—52.)

48. Every such application shall further be accompanied by a specification giving the following information—

- (a) the materials and method of construction to be used for external walls, party walls, foundations, roofs, floors, fire-places and chimneys ;
- (b) the manner in which roof and house drainage and the surface drainage of the site will be disposed of ;
- (c) the manner, if any, in which it is proposed to pave the courtyard and open spaces in the building or premises and the slope to which the surface is to be made in each case ;
- (d) the means of access that will be available to scavengers for the cleansing of privies ;
- (e) the purpose for which it is intended to use the building ;
- (f) the means of ingress and egress, if the building is intended to be used as a dwelling-house for two or more families or as a place for carrying on any trade or business in which more than twenty people may be employed or as a place of public resort ; and
- (g) such other particulars as may be required by the Commissioners.

49. The plans shall be signed by the applicant.

50. All information and documents which it may be found necessary to require, and all objections which it may be found necessary to make, before deciding whether a site should be approved for a building or whether permission, to construct or re-construct a building should be given, shall be required and made in one requisition and the applicant shall be apprised thereof at the earliest possible date.

51. Within fifteen working days from the date of receipt of an application under section 317, the Chairman may require the applicant—

- (a) to furnish him with any information on matters referred to in these rules which has not already been given in the documents thereunder, or
- (b) to satisfy him that there are no objections which may lawfully be taken to the approval of the site.

52. If any information or document required under rules 50 and 51 is, in the opinion of the Chairman, incomplete or defective, he may, within fifteen working days from the date of receipt of the same, require further information or documents to be furnished.

of 1932.]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 53—62.)

53. If any requisition made under rules 51 and 52 is not complied with within three months, the application under section 317 shall be refused.

54. When the Chairman has approved any site-plan or given permission to execute any work, he shall sign such site-plan of the work, as the case may be.

55. One copy of the site-plans and one copy of the building plans shall be kept at the site of the building, at all times when building operations are in progress, and such plans shall be available at all such times for the inspection of the Chairman or of any officer authorized by him in that behalf.

¹SECTION E.—*Huts generally.*

56. Except with the written permission of the Chairman no portion of a hut shall be placed within six feet of a masonry or wooden building ; provided that this rule shall not preclude the construction of huts in compounds in any case, where masonry or wooden outhouses would be permissible.

57. No hut shall be of more than two storeys nor exceed twenty feet in height, measured from the top of the plinth to the junction of the eaves and wall.

58. The plinth of a hut shall be raised at least one foot above the level of the centre of the nearest street or passage.

¹SECTION F.—*Huts on lands exclusively set apart for the same.*

59. Huts on land exclusively set apart for the same shall be built in continuous lines, in accordance with alignments to be prescribed by the Commissioners.

60. Where an alignment prescribed under rule 59 does not correspond with the alignment of a street, a passage of at least twenty feet, measured from eave to eave, shall be left between the rows of huts abutting on such prescribed alignment.

61. All passages referred to in rule 60 shall remain private property, subject to a right in the municipal authorities to send carts along them or otherwise make use of them for any of the purposes of this Act.

62. Notwithstanding anything contained in rule 59 huts may, with the general sanction of the Commissioners, be built so as to form an open courtyard, comprising at least one-fourth of the whole area occupied by the huts and courtyard, where the huts are of only one storey and at least one-third of such whole area where there are one or more two-storied huts or more than one side of the courtyard.

¹See foot-note 2 on page 446, *ante*.

[Ben. Act XV]

(Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Rules 63—69 and Form A.)

63. There shall be between any two huts a space of at least three feet, measured from eave to eave.

¹SECTION G.—Applications for permission to construct or re-construct huts.

64. Every application for permission to construct or re-construct a hut shall be submitted in the form given in Form B attached to these rules (to be supplied by the Chairman free of charge).

65. If it is intended to use the hut or part thereof for any of the purposes specified in section 370 of the Act or as a stable, cattle-shed or cow-house, the fact shall be expressly stated in such application.

66. Every such application shall be accompanied by a site-plan showing the hut, the means of access thereto from the street, and such other particulars as may be required by the Commissioners.

67. The Chairman may require the applicant—

- (a) to furnish him with any information which has not already been given, or
- (b) to satisfy him that there are no objections which may lawfully be taken to the grant of permission to execute the work.

68. If any information or plan required under rule 66 or rule 67 is, in the opinion of the Chairman, incomplete or defective, he may require further information or a fresh plan to be furnished.

69. If any requisition made under rule 67 or rule 68 is not complied with within two months the application received under section 317 shall be refused.

FORM A²

(See rule 43.)

Dated.....

Application for permission to construct or re-construct a masonry building.

To

The Chairman.....Municipality.

Sir,

I beg to give notice that I intend to construct or re-construct a masonry building or make alterations in or additions to premises No....., in.....street,.....ward, and in accordance with the provisions of section 317, read with section 326, I forward herewith—

- (a) a site-plan in duplicate of the land for your approval,

¹ See foot-note 2 on page 446, ante.

² Published under notification No. 49T.—M., dated the 4th May 1933, in the Calcutta Gazette of the 18th idem, Pt. I., page 729.

of 1932.]

[Schedule VI.—Rules as to the use of building-sites and the execution of building work.—Form B.]

- (b) a plan in duplicate showing elevations and sections of the proposed building together with a specification of the work, and
- (c) other particulars.

I request that the site may be approved and that permission may be accorded to execute the work.

Signature of the owner.....

Address.....

FORM B¹.

(See rule 64.)

Date.....

Application for permission to construct or re-construct a hut.

To

The Chairman,.....Municipality.....

Sir,

I beg to give notice that I intend to construct or re-construct a hut or huts in.....street,.....ward, and, in accordance with the provision of section 317, read with section 326, I forward herewith a site-plan, in duplicate, showing the hut, the means of access thereto from the street, the position and nature of the nearest source of water-supply, the purpose for which the hut is proposed to be erected and other particulars.

I request that the site may be approved and that permission may be accorded to execute the said work.

Signature of the owner.....

Address.....

2* * *

¹Published under notification No. 49T.—M., dated the 4th May 1933, in the *Calcutta Gazette* of the 18th *idem*, Pt. I., page 729.
See also foot-note 2 on page 444, *ante*.

Page 557—

*Delete footnote 2.

Revenue Department notification No. 3485 E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.

leading
municipal
to the
(1) of the

[Ben. Act XV

(Schedule VII.—Rules for the construction, etc., of private roads and bridges.—Rules 1—6.)

SCHEDULE VII.

(See sections 474, 477 and 557.)

Rules for the construction, etc., of private roads and bridges.

Part I.—Roads.

Applica-
tion for
permission
to cons-
truct, re-
construct,
or alter a
private
road.

1. (1) Every application for permission to construct, re-construct or alter a private road other than a foot-path must be accompanied by—

- (a) a plan of the road, showing cross-sections,
- (b) type-drawings of all bridges to be provided or already provided for the road, and
- (c) a description of the provision which it is intended to make or which already exists in respect of retaining walls and revetments (if any) and drainage.

(2) Every application for permission to construct, re-construct or alter a private foot-path must be accompanied by a full description of the path.

Slope.

2. (1) A private road must be so constructed as to have a slope, inwards towards the hillside.

(2) Such slope must be not less than the gradient of the road.

Retaining
walls and
revet-
ments.

3. (1) Whenever the Commissioners so direct, the outer edge of a private road must be protected by retaining-walls, and the inner-cutting by revetments.

(2) Such walls and revetments must be of such number and must be placed in such positions as the Commissioners may direct, and must be constructed in accordance with the rules contained in Schedule IX.

Drain.

4. A stone-lined-drain must be provided on the inner-side of a private road, where such side is not rock.

Part II.—Bridges.

Applica-
tion for
permission
to cons-
truct, re-
construct
or alter a
private
bridge.

5. Every application for permission to construct, re-construct or alter a private bridge must be accompanied by drawings of the bridge.

Water-way.

6. A private bridge must be constructed so as to leave sufficient water-way to pass the *maximum* discharge of the channel spanned by the bridge.

of 1932.]

(Schedule VII.—Rules for the construction, etc., of private roads and bridges.—Rules 7—9.—Schedule VIII.—Rules for the construction, etc., of private drains.—Rules 1—6.)

7. The flooring placed in the bed of the channel under a private bridge must, as far as practicable, be laid at the same slope as that of the channel.

Slope of flooring under bridge.

8. When a pocket for the deposit of *debris* is cut in the hillside above a private bridge, otherwise than a solid rock, such pocket must be lined with masonry walling.

Pocket above bridge.

9. When a small drain is crossed by a private road, a wooden or iron grating must, if the Commissioners so direct, be laid over the drain, instead of a covered culvert.

Substitution of gratings for culverts.

SCHEDULE VIII.

(See sections 471, 482 and 557.)

Rules for the construction, etc., of private drains.

1. Drains for sullage water shall be constructed with half or one-third glazed earthenware tile inverts and cement sides.

Construction of drains for sullage water.

2. (1) Drains for surface water only may be constructed either of dry rubble masonry or of any other material approved by the Commissioners, and may be either rectangular or U-shaped or V-shaped in section.

Construction of drains for surface water.

(2) Such drains shall not be connected with any drain carrying sullage water or sewage.

3. Except with the written permission of the Commissioners no covered drain shall be constructed and no open drain shall be covered in.

Drains to be open.

4. The sectional area of every drain shall be subject to the approval of the Commissioners.

Sectional area.

5. (1) Drains must discharge into the nearest water-channel or public drain, unless in any case the Commissioners otherwise direct.

Discharge.

(2) The outfall of a drain into a water-channel or public drain must be protected and guided in such manner as the Commissioners may direct.

(3) Where the drain of a private road joins the drain of a public road, the former drain must be so directed or so protected by strike-boards as to minimize the risk of damage to the public drain or road.

6. A masonry drain must be placed round every masonry or framed building or block of such buildings, and the site must be sloped from all sides towards such drain.

Drain round masonry framed building.

[Ben. Act XV]

(Schedule IX.—Rules as to revetting, turfing and sloping.—
Rules 1—7.)

SCHEDULE IX.

(See sections 492 and 557.)

Rules as to revetting, turfing and sloping.

Part I.—Revetments, Retaining-walls and Toe-walls.

- | | |
|----------------------------------|--|
| Founda-
tion and
bed-line. | <p>1. (1) The foundation of every revetment, retaining-wall or toe-wall must be taken down to original and firm soil or rock ; and the bed-line must be cut at right angles with the face of the revetment or wall.</p> <p>(2) The building of any revetment, retaining-wall or toe-wall shall not be commenced until the foundation and bed-line have been inspected and approved by the Commissioners.</p> |
| Materials. | <p>2. (1) A revetment, retaining-wall or toe-wall may be made of dry rubble masonry but must, in any case in which the Commissioners so direct, be made of lime masonry.</p> <p>(2) No stone used shall be of greater height than its length or breadth.</p> |
| Laying of
stones. | <p>3. All stones used must be laid on their natural beds, and must be arranged so as to break joint as far as may be possible.</p> |
| Bonding. | <p>4. (1) One through bonding-stone or line of bonding-stones must be inserted at intervals of five feet in each course, and at points intermediate between the corresponding bonding-stones of the course below.</p> <p>(2) Any of the bonding-stones which do not extend right through the wall must overlap each other for one-third of their length.</p> |
| Solidity. | <p>5. Every revetment, retaining-wall or toe-wall must be built up solid to full section and spawls or chips shall not be used for filling the courses unless their use is unavoidable.</p> |
| Weep-
holes. | <p>6. Weep-holes must be provided at intervals of four feet horizontally and four feet vertically, beginning with the course immediately above ground level.</p> |
| Sections. | <p>7. (1) Where a revetment, retaining-wall or toe-wall does not exceed twenty feet in height and is not surcharged, the mean thickness of the revetment or wall above the footings shall not be less than one-third of the vertical height of the revetment or wall, measured from the top of the footings :</p> |

Provided that the width at the top shall in no case be less than one foot six inches and need not in any case exceed three feet six inches.

of 1932.]

(Schedule IX.—Rules as to revetting, turfing and sloping.—
Rule 8.)

(2) Where a revetment, retaining-wall or toe-wall does not exceed twenty feet in height and is surcharged, sub-rule (1) shall apply, the height being assumed for the purposes of that sub-rule to be one-and-a-half times the vertical height.

(3) Where a revetment or retaining-wall exceeds twenty feet in height, detailed designs must be submitted to the Commissioners, and the sections must be such as the Commissioners may approve.

Part II.—Sloping.

8. When, in pursuance of any requisition or direction made or given by the Commissioners, any slope is to be reduced, the angle to which the slope is reduced shall not be greater than 37°. Angle.

1* * *

Page 561—

*Delete footnote 1 in so far as it relates to addition of
Schedule X.

[See section 45.]

*Municipalities in which the Chairman shall be appointed
by the [State] Government.*

Municipality.

Darjeeling.

*Kalimpong."

(Vide paragraph XIX of the Revenue Department notification No. 3435 E.A., dated the 28th February, 1936, published in the *Calcutta Gazette* of the 5th March, 1936, Part I, pages 487-488.)

*The word "Kalimpong" was added by section 3 of the Bengal Municipal Act (Darjeeling District Amendment) Regulation, 1943 (Ben. Regn. VII of 1943)

Bengal Act XXI of 1932

[THE BENGAL CRIMINAL LAW (ARMS AND EXPLOSIVES) ACT, 1932.]¹

REPEALED IN PART Ben. Act XVI of 1946.

ADAPTED ... { The Indian Independence
(Adaptation of Bengal
and Punjab Acts) Order,
1948.
(12th January, 1932.)

XI of 1878. *An Act to provide enhanced punishment for certain offences under*
VI of 1908. *the Indian Arms Act, 1878, and the Explosive Substances Act,*
1908, in their application to Bengal and to make special pro-
vision for the trial of certain offences under the Indian Arms
Act, 1878.

WHEREAS it is expedient to provide enhanced punishment for certain offences under the Indian Arms Act, 1878, and the Explosive Substances Act, 1908, in their application to Bengal, and for this purpose to amend the said Act in the manner hereinafter appearing ;

AND WHEREAS it is also expedient to make special provision for the trial of certain offences under the Indian Arms Act, 1878 ;

5 & 6 Geo.
V, c. 61 ;
6 & 7 Geo.
V, c. 37 ;
9 & 10 Geo.
V, c. 101.
AND WHEREAS the previous sanction of the Governor-General has been obtained, under sub-section (3) of section 80A of the Government of India Act, to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Criminal Law (Arms and Explosives) Act, 1932. Short title,
and extent.

(2) It extends to the whole of ²[West Bengal].

2. The Indian Arms Act, 1878, and the Explosive Substances Act, 1908, shall, in their application to ³[West Bengal], be amended in the manner provided in this Act. Amend-
ment of
Indian
Arms Act,
1878, and
Explosive
Sub-
stances
Act, 1908.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1932, Pt. IV, page 466 ; and for proceedings of the Council—see the Proceedings of the Bengal Legislative Council, Vol. XL, No. 2, page 218.

²These words were substituted for the word "Bengal" by Article. 8(2) and the Sch. of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

[Ben. Act XXI of 1932.]

(Sections 3—8.)

Insertion
of new
section
19A in
Act XI
of 1878.

3. After section 19 of the Indian Arms Act, 1878, the following section shall be inserted, namely :— XI of 1878.

For
breaches
of sections
6, 13, 14
and 15 in
respect
of certain
arms.

“19A. Notwithstanding anything contained in section 19, whoever commits an offence under clause (c) or clause (e) or clause (f) of section 19 shall, if the offence is committed in respect of a pistol, revolver, rifle or shot gun, be punished with transportation for life or any shorter term, or with imprisonment for a term which may extend to fourteen years, or with fine.”

Amend-
ment of
section 20
of Act XI
of 1878.

4. At the end of section 20 of the Indian Arms Act, 1878, the following proviso shall be added, namely :—

“Provided that if an offence committed under this section is in respect of a pistol, revolver, rifle or shot gun, the offender shall be punished with transportation for life or any shorter term, or with imprisonment for a term which may extend to fourteen years, or with fine.”

Insertion
of new
section 5A
in Act VI
of 1908.

5. After section 5 of the Explosive Substances Act, 1908, the following section shall be inserted, namely :— VI of 1908,

Enhanced
punish-
ment for
offences
under
sections
3, 4 and 5
in certain
cases.

“5A. Notwithstanding anything contained in section 3, section 4, or section 5, if an offence under any of these sections is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, or by a Special Magistrate under the Bengal Suppression of Terrorist Outrages Act, 1932, any person found guilty of such offence shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to fourteen years, to which fine may be added.”

Ben. Act
XII of
1932.

6, 7, 8.—[Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).]

Bengal Act I of 1933

[THE HOWRAH MUNICIPAL (TEMPORARY PROVISIONS) ACT, 1933.]¹

REPEALED IN PART ... Ben. Act XVI of 1946.

ADAPTED The Government of India
(Adaptation of Indian Laws)
Order, 1937.

(30th March, 1933.)

An Act to provide for certain matters in connection with the extension of certain provisions of the Calcutta Municipal Act, 1923, to the municipality of Howrah.

Ben. Act
III of
1928.

WHEREAS by notification No. 260M., dated the 18th January, 1932, as amended by notification No. 1366M., dated the 21st March, 1932, issued under sub-section (2) of section 541 of the Calcutta Municipal Act, 1923, the Local Government has been pleased to extend to the municipality of Howrah certain provisions of that Act subject to the restrictions and modifications specified therein with effect from the first day of April, 1933 ;

AND WHEREAS it is expedient to provide for the removal of certain difficulties in the way of bringing into operation the said provisions of the Calcutta Municipal Act, 1923, in the municipality of Howrah ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Howrah Municipal (Temporary Provisions) Act, 1933.

Short title,
commence-
ment and
extent.

(2) It shall come into force on the first day of April, 1933.

(3) It extends to the municipality of Howrah as constituted under the Bengal Municipal Act, 1932.

Ben. Act
XV of
1932.

2. Notwithstanding anything contained in any other law, all rules, by-laws, regulations, appointments, orders, directions and powers made, issued, conferred or continued under the provisions of the Calcutta Municipal Act, 1899, or of the Bengal Municipal Act, 1932, so far as they were in force in the municipality of Howrah on the thirty-first day of March, 1933, shall, so far as they are not inconsistent with the provisions of the Calcutta Municipal Act, 1923, as extended to the municipality of

Savings.

Ben. Act
III of
1899.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, 1933 Pt. IV, page 68 ; and for proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLI, No. 2, page 73.

²The third paragraph of the Preamble was repealed by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

[Ben. Act I of 1933.]

(Sections 3—6.)

Howrah, be deemed to have been made, issued or conferred under the provisions of that Act and continue in force unless and until they are superseded by rules, by-laws, regulations, appointments, orders, directions or powers made, issued or conferred under the said provisions.

3. [*Preparation of budget estimate, etc.*—Rep by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).]

4. [*Rates imposed under the Bengal Municipal Act, 1932, to be deemed to be consolidated rate under the Calcutta Municipal Act, 1923.*—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).]

Recovery
of arrear
dues.

5. All sums due to the Commissioners of the municipality of Howrah as arrears of rate on holdings, of lighting rate, of water rate and of latrine fees under the Bengal Municipal Act, 1884, as continued under the provisions of the Bengal Municipal Act, 1932, which are not realized on or before the thirty-first day of March, 1933, shall be treated as arrears of consolidated rate and shall be realized under the provisions of the Calcutta Municipal Act, 1923 as extended to the municipality of Howrah.

Ben. Act
III of
1884.
Ben. Act
XV of
1932.
Ben. Act
III of
1923.

6. [*Power to remove difficulties.*—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).]

Bengal Act VI of 1933

THE BENGAL SUPPRESSION OF IMMORAL TRAFFIC ACT, 1932.

Contents.

SECTION.

1. Short title, commencement and extent.
2. Repeals.
3. Definitions.
4. Punishment for keeping a brothel or allowing premises to be used as a brothel.
5. Determination of tenancy of premises in the case of a conviction under section 4.
6. Power to order discontinuance of house, room or place as brothel, etc.
7. Soliciting for purposes of prostitution.
8. Punishment for living on the earnings of prostitution.
9. Procuration.
10. Punishment for importing a female for prostitution.
11. Punishment for detention as prostitute or in brothels, etc.
12. Punishment for causing or encouraging or abetting seduction or prostitution of girl.
13. Removal of minor girls from premises in certain cases.
14. Disposal of minor girls removed from premises under section 13.
15. Validity of determination of age by Juvenile Court or Magistrate.
16. Power to call for record.
17. Intermediate custody of girls removed from premises under section 13.
18. Contribution of parent.
19. Authority of persons having custody of girl.
20. Inspection of institutions where girls are kept.
21. Appeal from orders by Juvenile Court or Magistrate.
22. Arrest without warrant for solicitation.
23. Offences triable only by Presidency or First Class Magistrate.
24. Bonds.
25. Notices.
26. Limitation of actions.
27. Rules.

THE SCHEDULE.

Enactments Repealed.

Bengal Act VI of 1933.¹

The Bengal Suppression of Immoral Traffic Act, 1933.²

REPEALED IN PART	Ben. Act I of 1939.
AMENDED ...	Ben. Act V of 1945.
	West Ben. Act XII of 1947.
	The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED ...	The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
	The Adaptation of Laws Order, 1950.

(22nd June, 1933.)

An Act for the suppression of ³[brothels and] immoral traffic in Bengal.

WHEREAS it is expedient to make better provision for the suppression of ⁴[brothels and of] traffic in women and girls for immoral purposes ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Suppression of Immoral Traffic Act, 1933.

(2) It extends to the whole of ⁵[West Bengal].

(3) This section shall come into force at once and the remaining provisions of this Act, in whole or in part, shall come into force in such areas and on such dates as the ⁶[State Government] may, by notification in the ⁷[Official Gazette], specify and for this purpose different dates may be specified for different provisions of this Act and for different areas.

2. The enactments specified in the Schedule are hereby repealed ⁸* * to the extent noted against each.

Short title, commencement and extent.

Repeals.

¹This Act may be read along with the provision of sec. 25 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956).

²For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1932, Pt. IV, page 66, and for report of the Select Committee, see *ibid*, 1933, Pt. IV, page 82, and for proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XXXVIII, No. 2, page 40, and *ibid*., Vol. XXXIX, No. I, pages 203 and 233 and *ibid*, Vol. XLI, No 3, pages 22, 102 and 149.

³These words were inserted by section 2 of, and the First Schedule to, the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

⁴These words were inserted, *ibid*.

⁵These words were substituted for the word "Bengal" by Article 3 (2) of the Indian Independence (Bengal and Punjab Acts) Order, 1948,

⁶The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter, the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws, Order, 1950.

⁷These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁸The words "or amended", were repealed by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1938).

(Section 3.)

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

- (1) “brothel” means any house, part of a house, room or place in which two or more females carry on prostitution ^{1*} * * * or in which any girl under the age of eighteen years is kept with intent that she shall at any age be employed or used for any immoral purpose.

Explanation.—Where a girl under the age of eighteen years is for the time being resident in any house or place used by one or more females for the purpose of prostitution and is being maintained by or associating with any prostitute, it shall, unless such girl is the daughter of an inmate of such house or place, be presumed until the contrary is proved that she is being kept with intent that she shall be employed or used for an immoral purpose.

- (2) “Commissioner of Police” means the Commissioner of Police for the town and suburbs of Calcutta, and includes a Deputy Commissioner of Police of Calcutta;
- (3) “prescribed” means prescribed by rules made under this Act ;
- (4) “prostitution” means promiscuous sexual intercourse for hire, whether in money or kind ;
- (5) “prostitute” means any female available for the purpose of prostitution ;
- (6) “public place” includes the site of any *hat*, *bazar* or *mela*, the banks of any river and any docks, jetties and ware-houses to which the public have access, every public building, garden, monument, and the precincts thereof, every place of public amusement, every place of public entertainment and every place accessible to the public for drawing water, washing or bathing, or for purposes of recreation.

Explanation.—(a) The expression “place of public amusement” means any place, enclosure, building, tent, booth or other erection, whether permanent or temporary, where music, singing, dancing, or any diversion or game, or the means of carrying on the same, is provided, and to which the public are admitted either on payment of money, or with the intention that money may be collected from those admitted, and includes a race-course, carnival, circus, cinema, theatre, music hall, billiard-room, bagatelle-room, gymnasium and fencing school.

(b) The expression “place of public entertainment” means any place, whether enclosed or open, to which the public are admitted, and where any kind of food or drink is supplied for consumption on the premises for the profit or gain of any person owning or having an interest in or managing such place and

¹The words “for the gain of any other person” were omitted by sec. 2 of, and the First Schedule to, the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

of 1933.]

(Section 4.)

includes a refreshment-room, eating-house, coffee-house, liquor-house, boarding-house, lodging-house, hotel, tea-shop, tavern and a wine, beer, sprit, *arrack*, *toddy*, *ganja*, *bhang* or opium shop.

(7) "Superintendent of Police" includes any Assistant Superintendent of Police or other person appointed by general or special order of the ¹[State Government] to perform all or any of the duties of a Superintendent of Police under this Act in any district.

4. (1) Any person who—

(a) keeps or manages or acts or assists in the management of a brothel, or

(b) being the tenant, lessee, occupier, or person in charge of any premises, knowingly permits such premises or any part thereof to be used as a brothel, or

(c) being the lessor or landlord, of any premises or the agent of such lessor or landlord, lets the same, or any part thereof, with the knowledge that the same, or any part thereof, is intended to be used as a brothel,

Punish-
ment for
keeping a
brothel or
allowing
premises to
be used as
a brothel.

shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(2) Any person who, having been convicted of an offence punishable under sub-section (1) is convicted of a subsequent offence punishable under the said sub-section shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both, and may in addition be ordered by the Court convicting him to execute a bond for a sum proportionate to his means, with or without sureties, to be of good behaviour for such period not exceeding three years as it thinks fit.

(3) If a conviction under sub-section (2) is set aside on appeal or otherwise the bond so executed shall be void.

(4) An order for the execution of a bond in accordance with the provisions of sub-section (2) may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(5) The provisions of Chapter VIII of the Code of Criminal Procedure, 1898, shall apply to orders made for the execution of bonds under this section, and imprisonment for failure to give security shall be rigorous or simple as the Court may direct.

(6) In a prosecution under this section if it is found that any premises or part thereof have been used as a brothel it shall be presumed until the contrary is proved that the manager, tenant, lessee, occupier or person in charge of such premises or part knew that the premises or part thereof were being used as a brothel.

(7) No Court shall take cognizance of any offence punishable under this section except on the complaint of—

(a) (i) the Corporation of Calcutta, if the premises are situated within its jurisdiction, or

Act V of
1898.

¹See foot-note 6 on page 569, *ante*.

(Section 5.)

- (ii) if the premises are situated elsewhere, the Chairman of the Municipality, District Board or Local Board, or the President of the Union Board within the jurisdiction of which the premises are situated, made in pursuance of a resolution of the Commissioners of the Municipality or of the Members of the Board as the case may be ; or
- (b) three or more persons occupying separate premises or holdings and resident in the vicinity of the premises or holdings to which the complaint relates ; or
- (c) a representative of any society recognised by the ¹[State Government] in this behalf who has been authorised by the society to institute prosecutions under this section.

(8) No complaint shall be instituted under this section in respect of any brothel with reference to which proceedings are pending under section 6.

Determina-
tion of
tenancy of
premises in
the case of
a convic-
tion under
section 4.

5. (1) On conviction of the tenant, lessee or occupier of any premises of any offence under section 4 in respect of such premises, the landlord or lessor of such premises shall be entitled to require the person so convicted to surrender the lease or other contract under which the said premises are held by him, or to assign the said lease or contract to some person approved by the landlord or lessor which approval shall not be unreasonably withheld, and, in the event of the person so convicted falling within three months to surrender or assign the lease or contract as aforesaid, the landlord or lessor shall be entitled to determine the lease or other contract, but without prejudice to the rights or remedies of any party to such lease accruing before the date of such determination.

(2) If the landlord or lessor determines a lease or contract of tenancy under the provisions of sub-section (1), the Court which convicted the tenant, lessee, or occupier of the premises may make an order for delivery of possession by such tenant, lessee, or occupier to the landlord or lessor within such time, not being less than seven days, as the Court may direct. A copy of the order shall be served on the person against whom it is made. If such person fails to comply with the order, he shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to two hundred rupees or with both, and the Court may take such steps as it considers necessary to put the landlord or lessor in actual possession of the premises.

(3) The Court convicting any tenant, lessee or occupier of an offence punishable under section 4 in respect of any premises may give notice in writing of such conviction to the landlord or lessor of such premises, and if the landlord or lessor after service of the notice does not exercise his rights under sub-section (1) and subsequently during the subsistence of the lease or contract an offence under section 4 is again committed in respect of the premises, the landlord or lessor shall be deemed to have abetted such offence, unless he proves that he has taken all reasonable steps to prevent the recurrence of the offence.

¹See foot-note 6 on page 569, ante.

of 1932.]

(Section 6.)

(4) Where a landlord or lessor determines a lease or other contract under sub-section (1), and subsequently grants another lease or enters into another contract of tenancy in respect of the same premises to, with or for the benefit of the same person he shall be deemed to have failed to exercise his rights under sub-section (1) and any offence under section 4 committed during the subsistence of the subsequent lease or contract shall be deemed for the purposes of this section to have been committed during the subsistence of the previous lease or contract unless such landlord or lessor satisfies the Court that he made reasonable inquiries to justify a *bona fide* belief that such tenant, lessee or occupier did not intend to use the premises as a brothel or to allow them to be so used.

(5) No action taken by any landlord or lessor under the provisions of this section shall be called in question in any Civil Court.

6. (1) If the Commissioner of Police or Superintendent of Police receives information that any house, room or place—

Power to order discontinuance of house, room or place as brothel, etc.

(a) is being used as a brothel or disorderly house, or for purpose of carrying on prostitution, in the vicinity of any educational institution or of any boarding house, hostel or mess used or occupied by students, or of any place of public worship or recreation, or

(b) is used as, or for the purpose, aforesaid to the annoyance of inhabitants of the vicinity, or

(c) is used, as, or for the purpose, aforesaid on any main thoroughfare which has been notified as such in this behalf by the ¹[State Government] on the recommendation of—

(i) the Corporation of Calcutta, if the thoroughfare is situated within its jurisdiction, or

(ii) the Commissioners of any Municipality, within whose jurisdiction the thoroughfare is situated, made in pursuance of a resolution of the Commissioners of the Municipality, or

(d) is used as a common place of assignation,

he may cause a notice to be served on the owner, lessor, manager, lessee, tenant or occupier of the house, room or place or all of them, to appear before him, either in person or by agent, on a date to be fixed in such notice, and to show cause why, on the grounds to be stated in the notice, an order should not be made for the discontinuance of such use of such house, room or place.

(2) If, on the date fixed, or on any subsequent date to which the hearing may be adjourned, the Commissioner of Police or Superintendent of Police is satisfied after making such inquiry as he thinks fit, that the house, room or place is used as described in clause (a), (b), (c), or (d) of sub-section (1), as the case may be, he may direct by order in writing to be served on such

¹See foot-note 6 on page 569, *ante*.

(Section 6.)

owner, lessor, manager, lessee, tenant or occupier, that the use as so described of the house, room or place be discontinued from a date not less than fifteen days from the date of the said order and be not thereafter resumed.

(3) No house, room or place, concerning which an order has been made under sub-section (2), shall again be used or, be allowed to be used, in any manner described in clause (a), (b), (c) or (d) of sub-section (1), as the case may be, and the Commissioner of Police or Superintendent of Police, if he is satisfied that such house, room or place is again used in such manner, may by order in writing to be served on the owner, lessor, manager, lessee, tenant or occupier of such house, room or place direct that the use as so described of such house, room or place be discontinued within a period of seven days and be not thereafter resumed.

(4) For the purposes of this section the decision of the Commissioner of Police or Superintendent of Police that a house, room or place is used in any manner, or for any purpose, described in clause (a), (b), (c) or (d) of sub-section (1) shall be final, and the legality or propriety thereof shall not be questioned in any trial or judicial proceeding in any Court.

(5) Whoever, after an order has been made by the Commissioner of Police or Superintendent of Police under sub-section (2) or sub-section (3) in respect of any house, room or place, uses, or allows to be used, such house, room or place in a manner which contravenes such order after the period stated therein, shall be punished with fine which may extend to fifty rupees for every day after the expiration of the said period during which the breach continues, and shall, on a second conviction for the same offence, be punished with imprisonment for a term which may extend to six months in addition to, or in lieu of, any fine imposed.

(6) For the purpose of an inquiry under this section the Commissioner of Police or Superintendent of Police may depute any police officer not below the rank of an inspector to make a local investigation, and may take into consideration his report thereon.

(7) The Commissioner of Police and the Superintendent of Police shall maintain a register in which shall be entered a description of all houses, rooms and places in respect of which an order has been made under this section. Such register shall be open to inspection by the public on payment of the prescribed fee.

(8) Notwithstanding anything contained in any other law for the time being in force, the owner or lessor of any house, room or place, in respect of which an order has been made on the lessee, tenant or occupier thereof directing the discontinuance of the use thereof as a brothel or disorderly house or for the purpose of carrying on prostitution, or as a common place of assignation, shall be entitled forthwith to determine such lease, tenancy or occupation.

(9) No proceedings shall be taken under this section in respect of premises which are the subject of any proceedings under section 4 or within six months of the termination of such proceedings.

of 1933.]

(Sections 7—10.)

7. (1) Any person who in any street or public place or within sight of, and in such manner as to be seen or heard from any street or public place, whether from within any house or building or not—

Soliciting for purposes of prostitution.

(a) by words, gestures, or indecent personal exposure attracts or endeavours to attract attention for the purposes of prostitution ; or

(b) solicits or molests any person for the purposes of prostitution ;

shall be punished with imprisonment of either description which may extend to one month or with fine which may extend to one hundred rupees, or with both.

(2) Notwithstanding anything contained in section 65 of the Indian Penal Code, imprisonment in default of fine imposed under sub-section (1) may extend to one month.

Act XLV
of 1860.

8. (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of another person shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both, and, if a male person, shall also be liable to whipping.

Punishment for living on the earnings of prostitution.

(2) Where a person is proved to be living with, or to be habitually in the company of a prostitute, or to have exercised control, direction or influence over the movements of a prostitute, in such a manner as to show that he is aiding, abetting or compelling her prostitution, it shall be presumed until the contrary is proved, that he is living on the earnings of prostitution :

Provided that the mother, or a son or daughter, of a prostitute, shall not be punished under this section for living on the earnings of such prostitute unless the Court is satisfied that such mother, son or daughter is aiding, abetting or compelling her prostitution.

9. (1) Any person who induces a female to go from any place with intent that she may, for the purposes of prostitution, become the inmate of or frequent a brothel, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both, and, if a male person, shall also be liable to whipping.

Procuration.

(2) An offence under this section shall be triable in the place from which the female was induced to go, or in any place to which she may have gone as a result of such inducement.

10. (1) Any person who brings or attempts to bring or causes to be brought into any place in which this Act is in force any female with a view to her earning hire, or being brought up to earn hire as a prostitute, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both, and, if a male person, shall also be liable to whipping.

Punishment for importing a female for prostitution.

[Ben. Act VI

(Sections 11—14.)

(2) An offence under this section may be tried in any place to which the female is brought or caused to be brought, or in which an attempt to bring her is made, or in any place from which she is brought or caused to be brought, or from which an attempt to bring her is made.

Punish-
ment for
detention
as prosti-
tute or in
brothels,
etc.

11. Any person who detains—

(a) any female under the age of eighteen years, against her will in any house, room or place in which prostitution is carried on, or

(b) any female against her will in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband, whether with any particular man or generally,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to one thousand rupees or with both.

Punish-
ment for
causing or
encourag-
ing or
abetting
seduction
or prosti-
tution of
girl.

12. If any person having the custody, charge or care of any girl under the age of eighteen years causes or encourages or abets the seduction or prostitution of that girl, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and, if a male person, shall be liable also to whipping.

Removal
of minor
girls from
premises
in certain
cases.

13. The Commissioner of Police, Superintendent of Police, or a police officer not below the rank of a sub-inspector specially authorised in writing in this behalf by the Commissioner of Police or Superintendent of Police, may enter any premises if he has reason to believe—

(a) that an offence punishable under section 4 has been committed or is being committed in respect of the premises ; or

(b) that a female in respect of whom an offence punishable under sections 8, 9, 10, 11 or 12 has been committed is to be found therein ;

and may remove any girl who appears to him to be under the age of eighteen years, if he is satisfied—

(a) that an offence punishable under section 4 has been or is being committed in respect of the premises ; or

(b) that an offence punishable under sections 8, 9, 10, 11 or 12 has been committed in respect of the girl.

Disposal
of minor
girls re-
moved
from pre-
mises
under
section 13.

14. (1) A girl who has been removed from any premises under section 13 and who appears to be under the age of sixteen years shall be brought before a Juvenile Court as defined in clause (3a) of section 3 of the Bengal Children Act, 1922, having jurisdiction over the place where the premises are situated. The Court shall make such inquiry as it thinks fit and, if satisfied that the girl is under the age of sixteen years and that she should be dealt with

Ben. Act
II of 1922.

of 1933.]

(Sections 15—17.)

as hereinafter provided, may pass an order that she be placed in suitable custody in the prescribed manner until she attains the age of eighteen years or for any shorter period, or make her over to the care of a suitable person under such conditions as may be prescribed and may in addition make an order that she be placed under the supervision of a person to be named by the Court.

(2) Where a girl has been removed from any premises under section 13 and there is no Juvenile Court having jurisdiction over the place where the premises are situated or the girl appears to be above the age of sixteen years, she shall be brought before a Magistrate of the first class having jurisdiction over such place. The Magistrate shall make such inquiry as he thinks fit and, if satisfied that the girl is under the age of eighteen years and that she should be dealt with as hereinafter provided, may pass an order that she be placed in suitable custody in the prescribed manner until she attains the age of eighteen years or for any shorter period, or make her over to the care of a suitable person under such conditions as may be prescribed and may in addition make an order that she be placed under the supervision of a person to be named by the Magistrate.

15. No order made by a Juvenile Court or a Magistrate under section 14 shall be invalidated by any subsequent proof that the age of the girl has not been correctly determined by the Court or the Magistrate.

Validity of determination of age by Juvenile Court or Magistrate.

16. Where any girl is produced before a Juvenile Court or a Magistrate under section 14 and any person has been tried by any Court on a charge under section 8, 9, 10, 11 or 12 in respect of such girl or under section 4 in respect of the premises from which she has been removed, the record of such trial may be called for by the Juvenile Court or the Magistrate and the record of evidence given in such trial may be used by such Juvenile Court or Magistrate for the purposes of the inquiry under section 14, as if recorded by such Court or Magistrate respectively.

Power to call for record.

Nothing in this section shall prevent any Juvenile Court or Magistrate hearing and recording the evidence of any witness if such Court or Magistrate thinks fit.

17. (1) When a girl has been removed from any premises under the provisions of section 13, the officer carrying out the removal shall, until such girl can be brought before a Juvenile Court or Magistrate of the first class, cause her to be detained in such place as may be prescribed in this behalf by the ¹[State Government]

Intermediate custody of girls removed from premises under section 13.

(2) When such girl is produced, the Juvenile Court or the Magistrate, as the case may be, may order her to be detained until the disposal of her case in such place as may be prescribed in this behalf by the ¹[State Government] or may make her over to the care of a suitable person and may order such person to execute a bond for her production.

¹See foot-note 6 on page 569, *ante*.

[Ben. Act VI

(Sections 18—22.)

Contri-
bution of
parent.

18. (1) When an order has been passed by a Juvenile Court or a Magistrate under section 14 for the custody of a girl, such Court or Magistrate may order the parent or other person liable to maintain the girl to contribute to her maintenance, if able to do so, in the prescribed manner.

(2) The Court or Magistrate, before making an order under sub-section (1), shall inquire into the circumstances of the parent or other person liable to maintain the girl and shall record the evidence, if any, in the presence of the parent or such other person, as the case may be, if he appears or, when his personal attendance is dispensed with, in the presence of his pleader.

(3) Any order made under this section may be enforced in the same manner as an order under section 488 of the Code of Criminal Procedure, 1898.

Act V of
1898.

Authority
of persons
having
custody
of girl.

19. Notwithstanding anything contained in any other law, any person to whose custody a girl is committed by an order made under section 14 shall, while the order is in force, have the like control over the girl as if he were her parent and shall be responsible for her maintenance and protection and the girl shall continue in his custody notwithstanding that she is claimed by her parent or any other person.

Inspection
of insti-
tutions
where
girls are
kept.

20. The ¹[State Government] may cause any institution in which any girl is kept for the time being in pursuance of an order made under section 14 and which is supported wholly or partly by voluntary contributions, and is not liable to be inspected by or under the authority of ²[any Government] to be visited and inspected from time to time by persons appointed by the ¹[State Government] for the purpose.

Appeal
from orders
by Juve-
nile Court
or Magis-
trate.

21. An appeal shall lie from any order passed under section 14 or section 18 by a Juvenile Court or by a Magistrate—

(a) if the Juvenile Court or the Court of the Magistrate is situated within the limits of the jurisdiction of the Chief Presidency Magistrate, to the Chief Presidency Magistrate ; and

(b) in any other case, to the District Magistrate of the district within which such Juvenile Court or the Court of such Magistrate is situated.

Arrest
without
warrant
for solici-
tation.

22. Any police officer may, at the instance of any person aggrieved, arrest without warrant any person who, in his sight and in a public place, solicits any person for the purposes of prostitution to the annoyance of the person solicited or of two or more inhabitants of the locality or passersby, if the name and address of the person soliciting be unknown to him and cannot be ascertained by him then and there.

¹ See foot-note 6 on page 569, *ante*.

² These words were substituted for the words "the Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1933.]

(Sections 23—27.)

Act V of
1898.

23. Notwithstanding anything contained in Schedule II to the Criminal Procedure Code, 1898, no Magistrate other than a Presidency Magistrate or Magistrate of the first class shall try any offence punishable under section 4, 5, 6, or 12.

Offences
triable
only by
Presidency
or First
Class
Magis-
trates.

24. The provisions of Chapter XLII of the Code of Criminal Procedure, 1898, shall apply to bonds taken under this Act, or under the rules made under section 27.

Bonds.

25. Whenever a notice or copy of an order may be served under the provisions of this Act, such service shall be made in the manner provided for the service of a summons in the Code of Criminal Procedure, 1898, provided that if service is to be made under the provisions of section 71 of that Code, and it is not known where the person on whom such notice or the copy of such order is to be served ordinarily resides, the serving officer shall affix one of the duplicates of such notice or such copy of such order to some conspicuous part of the premises to which such notice or order relates.

Notices.

Ben. Act
IV of 1866.

26. The provisions of section 99 of the Calcutta Police Act, 1866, shall apply to all actions and prosecutions against any person which may be lawfully brought for anything done or intended to be done, under the provisions of this Act in the town of Calcutta, as defined in the said Act; and the provisions of section 42 and section 43 of the Police Act, 1861, shall apply to all actions and prosecutions for anything done or intended to be done under the provisions of this Act elsewhere.

Limitation
of actions.

V of 1861.

27. (1) The ¹[State Government] may subject to the condition of previous publication make rules for carrying out the purposes of this Act.

Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[State Government] may make rules—

- (a) prescribing the fee to be paid for inspection of a register maintained under sub-section (7) of section 6;
- (b) prescribing the manner in which girls may be placed in suitable custody under sub-section (1) and sub-section (2) of section 14 and the places in which they may be kept, and providing for the care, treatment, instruction, maintenance, and supervision of such girls;
- (c) prescribing the conditions under which girls may be made over to the care of a suitable person under sub-section (1) and sub-section (2) of section 14;
- (d) prescribing the places in which girls may be detained under the provisions of sub-section (1) and sub-section (2) of section 17;

¹See foot note 6 on page 569, *ante*.

[Ben. Act VI of 1933.]

(The Schedule.)

- (e) prescribing the manner in which the managers of any institution prescribed as suitable custody may board out or license any girl placed in such custody under section 14, and providing for the supervision of such girls when boarded out or licensed ;
- (f) providing for bonds to be taken from persons with whom such girls are boarded out, or who take them on license ;
- (g) providing for bonds to be taken by a Juvenile Court or by a Magistrate when making such girls over to suitable custody, not being the custody of a notified institution, and for the form of such bonds, and the conditions to be contained therein, and for cancelling such bonds, and for making further provisions for the suitable custody of such girls on forfeiture of such bonds ;
- (h) regulating the contribution by parents and other persons liable to maintain girls placed in suitable custody.

THE SCHEDULE.*(See section 2.)***Enactments Repealed.**

Serial No.	Year.	Number.	Short-title.	Extent of repeal.
1	2	3	4	5
			<i>Bengal Acts.</i>	
1	1866	... II ...	The Calcutta Suburban Police Act, 1866.	(i) Section 41A and 49A. (ii) In clause (a) of sub-section (1) of section 43, the words, figures and letter "other than section 41A."
2	1866	... IV ...	The Calcutta Police Act, 1866.	(i) Sections 68B and 72A. (ii) In clause (a) of sub-section (1) of section 72, the words, figures and letter "other than section 68B."
3	1922	... II ...	The Bengal Children Act, 1922.	Section 41.
4	1928	... XIII ...	The Calcutta Suppression of Immoral Traffic Act, 1928.	The whole Act.
			<i>Eastern Bengal and Assam Act.</i>	
5	1907	... II ...	The Eastern Bengal and Assam Disorderly Houses Act, 1907.	The whole Act.

Bengal Act VII of 1933

(THE BENGAL MONEY-LENDERS ACT, 1933.)¹

ADAPTED ... (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
... (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
(c) The Adaptation of Laws Order, 1950.
(26th October, 1933.)

An Act to provide more effectual control of money-lending in Bengal.

WHEREAS it is expedient to make better provision for the control of money-lending and to give additional powers to Courts to deal with money-lending in Bengal ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Money-lenders Act, 1933.

(2) It extends to the whole of ²[West Bengal] :

Provided that nothing in this Act shall apply to any loan made within the limits of the Ordinary Original Jurisdiction of the High Court or under a contract made within those limits.

(3) It shall come into force on such date³ as the ⁴[State Government] may, by notification in the ⁵[Official Gazette], appoint.

Short title,
extent and
commence-
ment.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1932, Pt. IV, page 441 ; and for Report of the Select Committee, see *ibid.*, 1933, Pt. IV, page 2 and for further report of the Select Committee, see *ibid.*, 1933, Pt. IV, page 178 ; and for the proceedings of Council, see the Proceedings of the Bengal Legislative Council, Vol. XXXIX, No. 6, page 201, and *ibid.*, Vol. XL, No. 1, page 82, and *ibid.*, Vol. XLII, No. 1, page 230, and *ibid.*, No. 2, pages 57, 107, 167 and 214.

²These words were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³This Act came into force on the 1st July, 1934, *vide* Notification No 9039J., dated the 19th December, 1933, published in the *Calcutta Gazette*, dated the 28th December, 1933, Pt. I, page 1908.

⁴The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act VII

(Sections 2—7.)

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

(1) "money-lender" means any person who grants a loan of money ; and

(2) "prescribed" means prescribed by rules made under this Act.

Presump-
tion in
case of
certain
loans.

3. Where in any suit in respect of any money lent by a money-lender after the commencement of the Usurious Loans Act, 1918, it is found that the interest charged exceeds the rate of fifteen *per cent. per annum* in the case of a secured loan or twenty-five *per cent. per annum* in the case of an unsecured loan or that there is a stipulation for rests at intervals of less than six months, the Court shall, until the contrary is proved, presume for the purpose of section 3 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was harsh and unconscionable and was substantially unfair, but this provision shall be without prejudice to the powers of the Court under the said section where the Court is satisfied that the interest charged, though not exceeding fifteen *per cent. per annum* or twenty-five *per cent. per annum*, as the case may be, is excessive.

X of 1918.

Power to
limit
interest
recover-
able in
certain
cases.

4. Notwithstanding anything in any other Act, where in any suit in respect of any money lent by a money-lender before the commencement of this Act it is found that the arrears of interest amount to a sum greater than the principal of the loan, the Court, unless it is satisfied that the money-lender had reasonable grounds for not enforcing his claim earlier, shall limit the amount of such interest recoverable in the suit to an amount equal to the principal of the loan.

Maximum
rate of
interest
recoverable
under a
contract
which
provides
for the
payment
of com-
pound
interest.

5. No money-lender shall recover by suit interest of any kind at a rate exceeding ten *per cent. per annum* in respect of any loan made after the commencement of this Act under a contract which provides for the payment of compound interest.

Bar to
recovery
of interest
exceeding
the
principal.

6. No Court shall, in respect of any loan made after the commencement of this Act, decree on account of arrears of interest a sum greater than the principal of the loan.

Money-
lender
to supply
debtor with
particulars
of loan.

7. (1) Every money-lender, on demand made in the prescribed form by a debtor by registered post, shall supply such debtor with such particulars as may be prescribed concerning any loan made by him to the debtor on account of which any sum is due from the debtor.

of 1933.]

(Sections 8—10.)

(2) A money-lender who sends by registered post to the debtor at the address mentioned in the form of demand the particulars referred to in sub-section (1) shall be presumed to have complied with the demand made under that sub-section.

(3) Where a money-lender has complied with a demand made by a debtor under sub-section (1) the debtor shall not be entitled to make a further demand under the said sub-section in respect of the same loan within a period of six months from the date of such compliance.

8. If a money-lender to whom a demand has been made in accordance with the provisions of sub-section (1) of section 7 fails without reasonable excuse to comply therewith within a month from the date of the service of the demand, interest shall not be chargeable in respect of the loan concerning which the demand was made for so long as the default continues.

Failure to supply particulars under section 7.

9. (1) Where a debtor has sent to a money-lender by postal money-order any sum of money due from him to the money-lender in respect of a loan and the money-lender has refused to accept the same the debtor may apply in the prescribed manner to the lowest Civil Court having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the money-lender and the Court on receiving the prescribed fee from the debtor shall keep the said sum in deposit and shall send a notice of the deposit in the prescribed manner to the money-lender.

*Deposit in Court of money due to money-lender.

(2) If a money-lender accepts money sent in the manner specified in sub-section (1) by a debtor or withdraws money deposited under the said sub-section he shall not be bound by any statement made by the debtor in remitting or depositing the money.

10. (1) The ¹[State Government] may make rules for carrying out the purposes of this Act.

Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(i) the form of a demand by a debtor and the particulars to be supplied by a money-lender under sub-section (1) of section 7 ; and

¹See foot-note 4 on page 581, *ante*.

[Ben. Act VII of 1933.]

(Section 10.)

- (ii) the manner in which an application for deposit is to be made under sub-section (1) of section 9, the fee to be paid for such application, and the manner in which a notice of the deposit is to be sent to the money-lender.

¹[(3) The powers conferred by this section on the State² Government shall, in relation to banking business carried on by any corporation, be powers of the Central Government.]

¹Sub-section (3) was inserted by para. 3 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

²The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Bengal Act X of 1933

THE BENGAL PLACES OF PUBLIC AMUSEMENT ACT 1933.¹

ADAPTED

(a) The Government of India
(Adaptation of Indian Laws)
Order, 1937.

(b) The Indian Independence
(Adaptation of Bengal and
Punjab Acts) Order, 1948.

(c) The Adaptation of Laws
Order, 1950.

[9th November, 1933.]

An Act to provide for the better control of certain places of public amusement.

WHEREAS it is expedient to provide for the better control of certain places of public amusement and for the prevention of gambling in such places ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Places of Public Amusement Act, 1933.

(2) It extends to the whole of ^a[West Bengal.]

(3) This section, section 3 and section 12 shall come into force at once and the ^a[State Government] may, by notification in the ⁴[*Official Gazette*], direct that the remaining provisions of the Act shall come into force in any area on such date as may be appointed in the notification.

2. In this Act unless there is anything repugnant in the subject or context—

(1) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, and the Port of Calcutta as defined by notification under section 5 of the Indian Ports Act, 1908 ;

Short title,
local extent
and com-
mence-
ment.

Definitions.

5 & 6 Geo.
V, c. 61 ;
6 & 7 Geo.
V, c. 87 ;
9 & 10 Geo.
V, c. 101.

Ben. Act
IV of 1866.
Ben. Act
II of 1866.
XV of
1908.

¹For Statement of Object and Reasons, see the *Calcutta Gazette* of 1933, Part IV, page 156 ; and for report of the Select Committee, see *ibid.* page 274 , and for proceedings of the Council, see the Proceedings of the Bengal Legislative Council, vol. XLII, No. 1, page 157 and *ibid.* vol. XLII, No. 3, page 500.

²These words were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937. and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words "*Calcutta Gazette*:" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act X

(Sections 3—5.)

(2) "Commissioner of Police" means the officer vested with the administration of Police in Calcutta under the Calcutta Police Act, 1866, the Calcutta Suburban Police Act, 1866, the Calcutta Port Act, 1890, and any Act amending any of these Acts ;

Ben. Act
IV of 1866.
Ben. Act
II of 1866.
Ben. Act
III of 1880.

(3) "place of public amusement" means any place, enclosure, building, vessel, tent, booth or other erection, whether permanent or temporary, where music, singing, dancing or any diversion or game or the means of carrying on the same is provided and to which the public are admitted either free or on payment of money or on any other consideration and includes a carnival, circus or amusement park ;

(4) "prescribed" means prescribed by rules made under this Act.

Power to
declare
notified
places of
public
amuse-
ment.

3. The ¹[State Government] may, by notification in the ²[*Official Gazette*], declare that any places, or classes of places, of public amusement, specified in the notification, shall be notified places of public amusement for the purposes of this Act.

Prohibition
to open or
keep open
a notified
place of
public
amusement
without a
licence.

4. No person shall without, or otherwise than in conformity with the conditions of, a licence granted under this Act open or keep open any notified place of public amusement.

Licence to
open and
keep open
a notified
place of
public
amuse-
ment.

5. (1) The Commissioner of Police in Calcutta and elsewhere the District Magistrate within the limits of his jurisdiction, may, on receipt of an application in the prescribed form, containing the prescribed particulars, and on payment of the prescribed fee, grant to any person a licence to open a notified place of public amusement and to keep the same open for such period as may be specified in the licence on such conditions as may be prescribed in this behalf.

(2) When under any law a licence is required from any local authority for any place which is a notified place of public amusement under this Act, no licence shall be granted under this Act in respect of such place until a licence has been obtained from the local authority concerned.

(3) A licence may be refused in any case in which the Commissioner of Police or the District Magistrate, as the case may be, has reason to believe that the notified place of public amusement

¹ See foot-note 3 on page 585, *ante*.

² See foot-note 4 on page 585, *ante*.

of 1933.]

(Sections 6—8.)

will be conducted in contravention of any of the conditions of a licence which he is empowered to grant under this Act or is likely to lead to a breach of the peace, or to cause obstruction, annoyance or injury to residents in the locality.

6. The ¹[State Government] may, by notification in the ²[*Official Gazette*], declare that the playing in any notified place of public amusement of any game or class of games specified in the notification is, in its opinion, against the public interest.

Power to declare certain games to be against public interest.

7. The Commissioner of Police in Calcutta or elsewhere the District Magistrate within the limits of his jurisdiction may, by an order in writing served in the prescribed manner, suspend the playing, pending the receipt of the opinion of the ¹[State Government], in any notified place of public amusement, of any game or class of games which, in his opinion, is against the public interest and shall forthwith refer the matter to the ¹[State Government] for opinion :

Power to suspend the playing of certain games.

Provided that no such order shall remain in force for more than two months after it is made.

8. (1) If the Commissioner of Police in Calcutta or elsewhere the District Magistrate, within the limits of his jurisdiction, is satisfied that any notified place of public amusement is being kept open without, or in contravention of the conditions of, a licence granted under this Act he may by an order in writing, served in the prescribed manner, direct that such place shall be closed within such period as may be specified in the order. If the place is not closed within the period so specified any police officer authorised in writing in this behalf by the Commissioner of Police or the District Magistrate, as the case may be, may take any steps which may be necessary to close the said place.

Power to close any notified place of public amusement.

(2) The owner, the lessee or the manager of such place may apply in the prescribed manner to the Commissioner of Police or the District Magistrate, as the case may be, for revision of an order passed by him under sub-section (1).

(3) Any police officer not below the rank of an Assistant Sub-Inspector may enter any notified place of public amusement if he has reason to believe that such place is being kept open in contravention of the conditions of a licence granted under this Act.

¹See foot-note 3 on page 585, *ante*.

²See foot-note 4 on page 585, *ante*.

[Ben. Act X

(Sections 9—12.)

Penalty for unlawfully keeping open a notified place of public amusement.

9. If a notified place of public amusement is opened or kept open without, or in contravention of the conditions of, a licence granted under this Act the owner, the lessee or the manager of such place shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Penalty for contravention of an order under section 8.

10. If a notified place of public amusement is kept open in contravention of an order served under section 8 the owner, the lessee or the manager of such place shall be punishable with fine which may extend to one thousand rupees for every day on which such place is kept open in contravention of the said order.

Powers of Deputy Commissioner of Police and Sub-divisional Magistrate.

11. The ¹[State Government] may empower any Deputy Commissioner of Police in Calcutta or elsewhere any Sub-divisional Magistrate to exercise within the limits of his jurisdiction any of the powers of the Commissioner of Police or of the District Magistrate, as the case may be, under this Act :

Provided that any order passed by a Deputy Commissioner of Police or Subdivisional Magistrate may be reversed or modified by the Commissioner of Police or the District Magistrate, as the case may be.

Rules.

12. (1) The ¹[State Government] may, by notification in the ²[Official Gazette], make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the form of applications for the grant of licences under this Act and the particulars to be contained in such applications ;

(b) the form of licences to be granted under this Act and the fees to be paid for such licences ;

(c) the conditions of licences to be granted under this Act :

Provision may be made by such conditions—

(i) for the conduct of the notified place of public amusement in a decent and orderly manner and for securing the decent and orderly behaviour of all persons visiting the same ;

(ii) for the prevention of gambling therein ;

¹See foot-note 8 on page 585 *ante*.

²See foot-note 4 on page 585, *ante*.

of 1933.]

(Section 13.)

- (iii) prohibiting the playing of any game or class of games which in the opinion of the ¹[State Government] is against the public interest ; and
- (iv) prohibiting the playing, pending the receipt of the opinion of the ¹[State Government], of any game or class of games the playing of which is suspended under section 7 ;
- (d) the manner in which orders made under section 7 or section 8 shall be served ;
- (e) the manner of making applications under sub-section (2) of section 8 for revision of an order passed under sub-section (1) of that section.

13. No civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under this Act. **Indemnity.**

¹See foot-note 3 on page 585, *ante*.

Bengal Act VI of 1934

(THE BENGAL SMUGGLING OF ARMS ACT, 1934.)¹

ADAPTED ... (a) The Government of India (Adaptation of Indian Laws) Order, 1937.
 ... (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
 ... (c) The Adaptation of Laws Order, 1950.

(12th April, 1934.)

An Act for the prevention of smuggling of arms and ammunition in Bengal.

WHEREAS it is expedient to make better provision for the prevention of smuggling of arms and ammunition in Bengal ;

5 & 6 Geo.
V, c. 61 ;
6 & 7 Geo.
V, c. 87 ;
9 & 10 Geo.
V, c. 101.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Smuggling of Arms Act, 1934. Short title and extent.

(2) It extends to the whole of ²[West Bengal].

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

XI of 1878.

(1) “arms” and “ammunition” have the same meaning as in section 4 of the Indian Arms Act, 1878 ;

* * * * *

Ben. Act
IV of 1866.
Ben. Act
II of 1866.
Ben. Act
III of
1890.

(3) “Commissioner of police” means the officer vested with the administration of police in Calcutta under the Calcutta Police Act, 1866, the Calcutta Suburban Police Act, 1866, and the Calcutta Port Act, 1890 ;

(4) “notified area” means any area which is declared to be a notified area under section 3 ;

(5) “smuggler of arms” includes any person who—

(a) smuggles arms or ammunition into or from ²[West Bengal], or abets such smuggling ;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1934, Pt. IV, page 18 ; and for report of the Select Committee, see *ibid.*, page 86 ; and for proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XLIII, No. 1, pages 75 and 82 ; and *ibid.* No. 3, page 145.

²These words were substituted for the word “Bengal” by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³Clause (2) was omitted by Art. 3(1) of, and the Sch. to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

[Ben. Act VI

(Sections 3—5.)

- (b) sells, purchases, receives or transports, or abets the sale, purchase, receipt or transport of, arms or ammunition which he knows or has reason to believe to have been smuggled ;
- (c) has been convicted by any Court in India of an offence connected with the smuggling of arms and ammunition ; or
- (d) has been externed from any part of India outside ¹[West Bengal] for any act connected with the smuggling of arms or ammunition.

Power to
declare
notified
area.

3. The ²[Central Government] may, by notification in the ³[*Official Gazette*], declare that any area specified in the notification shall be a notified area for the purposes of this Act.

Report by
Commissioner of
Police or
District
Magistrate.

4. Whenever it shall appear to the Commissioner of Police or any District Magistrate that there is within a notified area within his jurisdiction any person who—

- (a) is a smuggler of arms, and
- (b) resides within or habitually visits or frequents such notified area,

the Commissioner of Police or the District Magistrate may make a report to the ²[Central Government] with a recommendation that such person be dealt with under the provisions of this Act.

Issue of
warrant on
receipt of
report.

5. (1) On receipt of the report of the Commissioner of Police or of the District Magistrate, as the case may be, the ²[Central Government] may make an order for the issue of a warrant for the arrest of the person against whom the report has been made.

(2) The warrant shall be in such form as shall be prescribed by the ²[Central Government] by notification in the ³[*Official Gazette*] and shall be issued by the Commissioner of Police or the District Magistrate, as the case may be, and shall contain a statement of the heads of the charges against such person, and shall require him to submit by petition to the advising Judges appointed under sub-section (1) of section 6, by such date as may be specified in the warrant, any representation that he may desire to make.

(3) The person arrested under such warrant shall be detained in custody until the final order of the ²[Central Government] under section 7 is communicated to him, unless the officer by whom

¹ See foot-note 2 on page 591, *ante*.

² These words were substituted for the words "Local Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1987.

³ These words were substituted for the words "*Calcutta Gazette*," by paragraph 4(1), *ibid*.

of 1934.]

(Section 6).

the warrant is issued directs, in his discretion, that such person shall be released from custody on his executing, to the satisfaction of such officer, a bond with sufficient sureties for his attendance at such place and at such time or times as may be specified in the warrant and thereafter as such officer may direct :

Provided that while such person is detained in custody he shall be given reasonable facilities, under proper safeguards, for communicating with his legal adviser.

(4) The Commissioner of Police or the District Magistrate by whom such warrant is issued shall have—

(i) for the enforcement of the attendance of the person, against whom the warrant is issued, at such place and at such time or times as may be specified therein (and thereafter as the Commissioner of Police or the District Magistrate may direct), in order to communicate to such person the final order of the ¹[Central Government] made under section 7, and

(ii) for the forfeiture, under section 514 of the Code of Criminal Procedure, 1898, of any bond, executed for the attendance of such person at such place and at such time or times,

Act V of
1898.

all the powers of a Presidency Magistrate or of such District Magistrate, respectively, under the Code of Criminal Procedure, 1898 ; and the warrant shall for the purposes set forth in clauses (i) and (ii) be deemed to be a warrant issued by a Presidency Magistrate or a District Magistrate, as the case may be, for the arrest of the said person to answer a charge in respect of a non-bailable offence committed by him within the jurisdiction of such Magistrate.

6. (1) After issue of the warrant under section 5, the ¹[Central Government] shall forthwith cause the report of the Commissioner of Police or of the District Magistrate, as the case may be, with all material facts and circumstances in its possession relevant to the same, to be placed before two advising Judges, of whom one shall be the District and Sessions Judge having local jurisdiction over the notified area or any portion thereof concerned and the other a District and Sessions Judge or Additional District and Sessions Judge who has held judicial office not below that of an Additional District and Sessions Judge for a total period of not less than three years.

Central
Govern-
ment to
place re-
port before
advising
Judges.

Explanation.—For the purposes of this sub-section the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, and the Port of Calcutta as defined by notification under section 5 of the Indian Ports Act, 1908, shall be deemed to be included within the limits of the local jurisdiction of the District and Sessions Judge of the district of the 24-Parganas.

Ben. Act
IV of
1866.
Ben. Act
II of 1866.
XV of
1908.

¹See foot-note 2 on page 592, *ante*.

[Ben. Act VI**(Section 6.)**

(2) The advising Judges shall consider in camera the report and the other facts and circumstances, if any, adduced before them by the ¹[Central Government], and any representation, submitted to them by the person against whom the report has been made within the time fixed by section 5 or such further time as they may allow, and shall call for such further information, if any, and may examine such witnesses, if any, as shall appear to them to be necessary to enable them to tender their advice on the report. They shall also give to the person against whom the report has been made, if he so desires, an opportunity of appearing in person before them to offer his explanation, and may at the instance of that person require the attendance of any other person, whose statement may support that explanation :

Provided that—

- (a) nothing in this section shall be deemed to entitle the person whose case is before the advising Judges to appear or be represented before them by pleader, nor shall the ¹[Central Government] be so entitled,
- (b) the advising Judges shall not disclose to the person in question any fact the communication of which might endanger the safety of any individual, and
- (c) the advising Judges shall not be bound to observe the rules of evidence and shall not permit the putting of any question which may endanger the safety of any individual.

(3) Any statement made to the advising Judges by any person other than the person whose case is before them shall be deemed to be information given to a public servant within the meaning of section 182 of the Indian Penal Code, and the advising Judges shall for the purpose of securing the attendance of any person under the provisions of sub-section (2) have all the powers of a District Magistrate under the Code of Criminal Procedure, 1898.

Act XLV
of 1860.

Act V of
1898.

(4) When the advising Judges have reached their conclusions, they shall report the same in writing to the ¹[Central Government].

(5) If the person whose case is under their consideration claims, when submitting his representation or when appearing before the advising Judges, that both he and his father were born in ²[West Bengal] or that he is a member of a family which has definitely settled in ²[West Bengal] and is himself so settled, the advising Judges shall give him an opportunity of establishing his claim, and shall also give to the Commissioner of Police or the District Magistrate, as the case may be, an opportunity of rebutting the same, and at the time of submission of their report to the ¹[Central Government] shall record their opinion as to whether such person has established his claim.

¹See foot-note 2 on page 592, *ante*.

²See foot-note 2 on page 591, *ante*.

of 1934.]

(Sections 7, 8.)

7. (1) On receipt of the report of the advising Judges the ¹[Central Government], if satisfied that the person against whom the report has been made, should be removed elsewhere, may by an order reciting the conclusions of the advising Judges, as reported by those Judges,—

Order of removal by Central Government.

(a) direct him to leave ²[West Bengal] within such time, by such route or routes, and for such period as may be stated in the order, or

(b) where the ¹[Central Government] is satisfied that both he and his father were born in ²[West Bengal], or that he is a member of a family which has definitely settled in ²[West Bengal] and is himself so settled, direct him to leave the notified area within such time, by such route and for such period as may be stated in the order, and may in that case further order that he shall during the same period notify his place of residence and any change or intended change of residence and any absence or intended absence from his residence to the officer appointed by the ¹[Central Government] in this behalf.

(2) The order of the ¹[Central Government] under subsection (1) shall be final, and shall not be called in question in any subsequent proceeding under section 10 or section 11 :

Provided that the ¹[Central Government] may, at any time, cancel or suspend such order or reduce the period for which the said person is required to leave ²[West Bengal] or the notified area.

8. Where any person on whom a warrant has been served under section 5—

Evasion orders.

(i) fails to attend at the place and at the time or times specified in the warrant and thereafter when required in order to receive the order of the ¹[Central Government] under section 7, or

(ii) prior to the issue of that order, leaves ²[West Bengal] or the notified area, as the case may be,

the ¹[Central Government] may issue the order under section 7 in the absence of that person by publishing the same in the ³[Official Gazette], and such person shall be deemed to have absconded in order to evade that order :

Provided that the ¹[Central Government] may condone a failure to attend under clause (i), on reasons for such non-attendance being furnished to its satisfaction, and in that case such person shall not be deemed to have absconded in order to evade the order.

¹ See foot-note 2 on page 592, *ante*.

² See foot-note 2 on page 591, *ante*.

³ See foot-note 3 on page 592, *ante*.

[Ben. Act VI of 1934.]

(Sections 9—12.)

Identifi-
cation
order.

9. Every person in respect of whom an order has been made under section 7 shall, if so directed by the Commissioner of Police or the District Magistrate, as the case may be,—

- (i) present himself to be photographed ;
- (ii) allow his finger impression to be recorded ;
- (iii) if literate, furnish such officer with specimens of his writing and signature ; and
- (iv) attend at such times and places as the Commissioner of Police or the District Magistrate, as the case may be, direct for all or any of the aforesaid purposes.

Penalty
for breach
of order
under
section 7.

10. When any person, against whom any order has been made under section 7, fails to comply with such order within the time specified therein or after complying with the same order returns to, or after evading the same order returns to or remains in, any place within ¹[West Bengal] or the notified area, as the case may be, before the expiry of the period stated in the order, or fails to give to the officer appointed to receive it the information in regard to residence or absence set forth in section 7, such person may be arrested without a warrant by a police officer and shall, on conviction before a Presidency Magistrate or a Magistrate of the first class, be liable to be punished with rigorous imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty
for breach
of order
under
section 9.

11. (1) Any person who fails to comply with, or attempts to evade, any direction given in accordance with the provisions of section 9 shall be liable to be arrested without a warrant and shall, on conviction before a Presidency Magistrate or a Magistrate of the first class, be liable to be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Any offence under this section or under section 10 shall be deemed to be a non-bailable offence.

Operation
of other
penal laws
not
barred.

12. Nothing contained in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence punishable under such other law.

¹ See foot-note 2 on page 591, ante.

Bengal Act VII of 1934

(THE BENGAL CRIMINAL LAW AMENDMENT ACT, 1934.)¹

REPEALED IN PART

...

... Ben. Act XVI of 1946.

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.

ADAPTED

(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

(c) The Adaptation of Laws Order, 1950.

(29th March, 1934.)

An Act to supplement the criminal law in Bengal.

WHEREAS it is expedient to supplement the criminal law in Bengal for the purpose of dealing more effectively with the terrorist movement and to that end to amend the Indian Arms Act, 1878, the Explosive Substances Act, 1908, and the Indian Press (Emergency Powers) Act, 1931, in their application to Bengal, and also to amend the Bengal Criminal Law Amendment Act, 1930, and the Bengal Suppression of Terrorist Outrages Act, 1932, in the manner hereinafter appearing :

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Criminal Law Amendment Act, 1934.

Short title.

2. The Indian Arms Act, 1878, the Explosive Substances Act, 1908, and the Indian Press (Emergency Powers) Act, 1931, shall, in their application to ³[West Bengal] be amended in the manner provided in this Act.

Amendment of Indian Arms Act, 1878, Explosive Substances Act, 1908, and Indian Press (Emergency Powers) Act, 1931.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1934, Pt. IV, page 101, and for report of the Select Committee, see *ibid.*, page 106 ; and for proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol XLIII, No. 2, pages 80 and 84 and *ibid.*, No. 4, pages 442, 492, 533, 579, 630 and 698.

²These words were substituted for the word "Bengal" by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

XI of 1878.
VI of 1908.
XXIII of
1931.

Ben. Act
VI of 1930.
Ben. Act
XII of
1932.

5 & 6 Geo.
V, c. 61 ;
6 & 7 Geo.
V, c. 87 ;
9 & 10 Geo.
V, c. 101.

(Sections 3—6.)

Amendment of section 19A of Act XI of 1878.

3. In section 19A of the Indian Arms Act, 1878, for the words brackets, and letters "under clause (c) or clause (e) or clause (f)" the words, brackets and letters "under clause (a), (c), (e) or (f)" shall be substituted.

XI of 1878.

Insertion of new section 20A in Act XI of 1878.

4. After section 20 of the Indian Arms Act, 1878, the following section shall be inserted, namely.

Enhanced punishment in certain

"20A. Notwithstanding anything contained in this Act, whoever goes armed with a pistol, revolver, rifle or other fire-arm in contravention of the provisions of section 13, or has any such fire-arm in his possession or under his control in contravention of the provisions of section 14 or section 15, under circumstances indicating that he intended that such fire-arm should be used for the commission of any offence of murder shall, if he is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, be punished with death, or with transportation for life or any shorter term or with imprisonment for a term which may extend to fourteen years, to which fine may be added."

Insertion of new section 5B in Act VI of 1908.

5. After section 5A of the Explosive Substances Act, 1908, the following section shall be inserted, namely :—

VI of 1903.

Enhanced punishment in certain cases.

"5B. Notwithstanding anything contained in this Act, any person who makes or has in his possession any explosive substance under circumstances indicating that he intended that such explosive substance should be used for the commission of any offence of murder shall, if he is tried by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, be punished with death, or with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to fourteen years, to which fine may be added."

Insertion of new sections 2A and 2B in Act XXIII of 1931.

6. After section 2 of the Indian Press (Emergency Powers) Act, 1931, the following sub-heading and sections shall be inserted, namely :—

XXIII of 1931.

"Prohibition of publication of certain information.

Power to prohibit publication of certain information.

2A. The ¹[State Government] may, by notification in the ²[Official Gazette], prohibit either absolutely or subject to such conditions and restrictions as may be specified

¹The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²These words were substituted for the words "Local Official Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1934.]

(Sections 7—27.)

in the notification, the publication in any newspaper, news-sheet, pamphlet, leaflet or other document of any class of information which, in the opinion of the ¹[State Government], tends to excite sympathy with, or secure adherents to, the terrorist movement.

Ben. Act
XII of 1932.

- 2B. Neither the name nor the designation nor any words, signs or visible representations disclosing the identity of any witness in a trial by Commissioners appointed under the Bengal Criminal Law Amendment Act, 1925, or in a trial by a Special Magistrate under the Bengal Suppression of Terrorist Outrages Act, 1932, shall, without the permission of the Commissioners, or of the Special Magistrate, as the case may be, or of the ¹[State Government], be published in any newspaper, news-sheet, pamphlet, leaflet, or other documents.”.

Prohibition of publication of names, etc., of certain witnesses.

XXIII of
1931.

7. In sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931, after clause (i), the following words and clauses shall be inserted, namely :—

Amendment of section 4 of Act XXIII of 1931.

“or which

(j) give any information in contravention of a notification published under section 2A, or

(k) disclose the identity of any witness in contravention of the provisions of section 2B.”.

8. In sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931, before *Explanation 1* the following proviso shall be inserted, namely :—

Amendment of section 4 of Act XXIII of 1931.

“Provided that no such declaration shall be made in a case to which clause (j) applies unless the keeper of the printing-press has had an opportunity of showing cause why such declaration should not be made.”.

9 to 27.—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

¹ See foot-note 1 on page 598, ante.

■

■

Bengal Act X of 1934
THE BENGAL NURSES ACT, 1934.

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Bengal Act X of 1934

(THE BENGAL NURSES ACT 1934.)¹

AMENDED	<div> <div>West Ben. Act XIII of 1949.</div> <div>West Ben. Act XXI of 1950.</div> <div>West Ben. Act XII of 1951.</div> <div>West Ben. Act V of 1956.</div> </div>
ADAPTED	...	...	<div> <div>(a) The Government of India (Adaptation of Indian Laws) Order, 1937.</div> <div>(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.</div> <div>(c) The Adaptation of Laws Order, 1950.</div> </div>

(3rd May, 1934.)

An Act to provide for the registration and better training of nurses, midwives and health visitors in Bengal.

WHEREAS it is expedient to provide for the registration of nurses, midwives and health visitors in Bengal and to secure their better training ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

Preliminary.

1. (1) This Act may be called the Bengal Nurses Act, 1934.
- (2) It extends to the whole of ²[West Bengal].
- (3) It shall come into force on such ³date as the ⁴[State ment] may, by notification, direct.

Short title,
local ex-
tent and
commence-
ment.

2. In this Act, unless there is anything repugnant in the sub-
ject or context—

Defini-
tions.

- (a) “the Council” means the Council established under sec-
tion 3 ;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1933, Pt. IV, page 175 ; and for report of the Select Committee, see *ibid*, 1934, Pt. IV, page 139 ; and for proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XLII, No. 3, page 59 and *ibid*, Vol. XLIII, No. 1, page 94 and *ibid*, No. 4, page 327.

²These words were substituted for the word “Bengal” by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³This Act came into force on the 13th February, 1936—*vide* Notification No. 521 Medl., dated the 8th February, 1936, published in the *Calcutta Gazette*, dated the 13th February, 1936, Pt. I, page 348.

⁴The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 3, 4.)

- (b) "notification" means a notification published in the ¹[Official Gazette] ;
- (c) "prescribed" means prescribed by rules or regulations made under this Act ; and
- (d) "register" means a register maintained under section 14, and "registered" means registered under the provisions of this Act.

Constitution of the Council.

Establishment and incorporation of the Council.

3. The ²[State Government] may, by notification, establish a Council, to be called "The ³[West Bengal] Nursing Council" for the purpose of carrying out the provisions of this Act ; and such Council shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

Constitution of the Council.

4. The Council shall consist of the following ⁴[twenty] members, namely :—

- ⁵(a) [The Director of Health Services, West Bengal.....who will be President ;]
- (b) the principal, Medical College, Calcutta ;
- ⁶(c) the Superintendent of Nursing Services, West Bengal ;
- (d) the Principal, Carmichael Medical College, Belgachia ;
- (e) the Surgeon-Superintendent, Presidency General Hospital, Calcutta ;
- (f) the Lady Superintendent of Nursing, Medical College Hospitals, Calcutta ;
- (g) the Superintendent, Dufferin Hospital, Calcutta ;
- (h) the Nursing Superintendent, Dufferin Hospital, Calcutta ; ⁷*Ex-officio.*
- (i) the Matron, Presidency General Hospital, Calcutta ;
- (j) the Lady Superintendent of Nursing, Sambhunath Pandit Hospital, Calcutta ;
- ⁷(j1) the Superintendent, Nilratan Sircar Medical College Hospital, Calcutta ;
- ⁷(j2) the Nursing Superintendent, Nilratan Sircar Medical College Hospital, Calcutta ;
- ⁷(j3) the Matron, Bejoy Chand Hospital, Burdwan, *Ex-officio* ;

¹These words were substituted for the words "Calcutta Gazette" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 4 on page 603, *ante*.

³See foot-note 2 on page 603, *ante*.

⁴Substituted for the word "seventeen" by sec. 2(a) of the Bengal Nurses (Amendment) Act, 1955 (West Ben. Act V of 1955).

⁵Clause (a) was substituted for the original clause by sec. 2(a) of the Bengal Nurses (West Bengal Amendment) Act, 1949 (West Ben. Act XIII of 1949).

⁶The original clause (c) was omitted by sec. 2(b) of the Bengal Nurses (West Bengal Amendment) Act, 1949 (West Ben. Act XIII of 1949), and thereafter this clause (c) was inserted by sec. 2 of the Bengal Nurses (West Bengal Amendment) Act, 1951 (West Ben. Act XII of 1951).

⁷Clauses (j1), (j2) and (j3) were inserted by sec. 2(b) of the Bengal Nurses (Amendment) Act, 1955 (West Ben. Act V of 1955).

of 1934.]

(Sections 5—7.)

- (k) one person to be elected by the ¹[West Bengal] Council of Medical Registration from among their own members ;
- (l) one person to be elected by the Governing Body of the State Medical Faculty of ¹[West Bengal] from among their own members ;
- (m) one registered nurse, one registered midwife and one registered health visitor to be elected by the registered nurses, midwives and health visitors, respectively, and
- (n) two persons to be appointed by the ²[State Government] of whom at least one shall be appointed to represent institutions ³[in West Bengal] for the training of nurses, midwives and health visitors :

Provided that, in the case of the first constitution of the Council under this Act, one nurse, one midwife and one health visitor having such professional qualification as the ⁴[State Government] may deem suitable shall be appointed in the places of the registered nurse, midwife and health visitor, respectively, specified in clause (m) and any vacancy which may occur in the case of any member so appointed shall similarly be filled by the ²[State Government] unless at least twenty-five nurses, midwives or health visitors, as the case may be, shall have been registered :

⁴Provided further that no person shall be entitled to vote at the election of a person to be a member of the Council under clause (k), clause (l) or clause (m) or to be elected as such a member unless he is—

- (i) a citizen of India ; and
- (ii) resides, or carries on his profession or is employed in West Bengal.

5. If any of the bodies of electors referred to in clauses (k), (l) and (m) of section 4 does not, by such date as may be fixed by the ³[State Government], elect a person to be a member of the Council, the ²[State Government] shall, by notification, appoint to the vacancy a person qualified for election thereto ; and any person so appointed shall be deemed to be a member of the Council as if he had been duly elected by that body.

Appoint-
ment of
members in
default of
election.

6. The name of every member appointed or elected under section 4 or section 5 shall be published by the ²[State Government] in the ⁵[Official Gazette] .

Publica-
tion of
names of
members.

7. The Council may permit any member to absent himself from meetings of the Council for any period not exceeding six months.

Leave of
absence to
members.

¹ See foot-note 2 on page 603, *ante*.

² See foot-note 4 on page 603, *ante*.

³ These words were inserted by sec. 2(c) of the Bengal Nurses (West Bengal Amendment) Act, 1949 (West Ben. Act XIII of 1949).

⁴ This proviso was added by sec. 2 of the Bengal Nurses (West Bengal Amendment) Act, 1950 (West Ben. Act XXI of 1950).

⁵ See foot-note 1 on page 604, *ante*.

(Sections 8—11.)

[Ben. Act X

Cessation
of
member-
ship.

8. (1) An appointed or elected member of the Council shall be deemed to have vacated his seat—

(a) if he is absent without excuse sufficient in the opinion of the Council from three consecutive meetings of the Council ;

(b) if he is absent out of India for any period exceeding six consecutive months.

(2) On the occurrence of any vacancy referred to in sub-section (1), the President of the Council shall forthwith report the fact of such vacancy to the ¹[State Government], who shall thereupon, by notification, declare the seat to be vacant.

Filling of
casual
vacancies.

9. If any member dies or resigns his membership or ceases to be a member as provided in sub-section (1) of section 8, the vacancy shall be filled within one month of the notification of the vacancy by a fresh appointment or election, as the case may be, under section 4 :

Provided that if any such casual election is not held within the said period, or if at any such election no member is elected, the ¹[State Government] shall, by notification, appoint to the vacancy a person qualified for election thereto :

Provided also that any person appointed or elected to fill a casual vacancy shall hold office only so long as the member in whose place the appointment or election is made would have held office.

Term of
office of
members.

10. (1) Subject to the provisions of sub-section (1) of section 8, and section 9, the term of office of members other than *ex-officio* members shall be three years.

(2) Any member shall be eligible for re-appointment or re-election at the end of his term of office.

(3) The powers of the Council may be exercised notwithstanding any vacancy in the number of its members fixed by section 4.

Business of the Council and Committees.

Meetings
of the
Council
and consti-
tution
of com-
mittees.

11. (1) The Council shall make regulations to regulate—

(a) the mode of transaction of business, including provision for decisions on emergent matters by the circulation of papers to members, and for co-opting persons specially qualified to advise on any particular matter before the Council ;

(b) the times and places at which its meetings shall be held ;

(c) the issue of notices convening such meetings ;

(d) the conduct of business thereat ; and

¹ See foot-note 4 on page 603, ante.

of 1934.]

(Sections 12, 13.)

- (e) the constitution of committees, the delegation to such committees of any powers or duties of the Council under this Act and the procedure of the committees (including quorum) in the transaction of business :

Provided that—

- (i) no business shall be transacted at any meeting of the Council unless a quorum of eight members be present; and
- (ii) save as provided in section 20, all questions arising at any meeting of the Council shall be decided by the votes of the majority of the members present and voting or in case of an equality of votes, by the casting vote of the President of the Council or in his absence of the member presiding at the meeting.

(2) Until such time as the regulations referred to in sub-section (1) have come into operation, it shall be lawful for the President of the Council to summon a meeting at such time and place as to him seem expedient, by letter addressed to each member.

12. There shall be paid to the members of the Council such fees, if any, for attendance at meetings of the Council or of committees of the Council and such reasonable travelling expenses for attending such meetings or for inspecting institutions as may from time to time be allowed by the Council and approved by the ¹[State Government].

Payment of fees and travelling expenses to members.

Establishment.

13. (1) With the previous sanction of the ¹[State Government], the Council—

Registrar and office staff of the Council.

- (a) shall appoint a Registrar,
- (b) may grant leave to such Registrar and appoint a person to act in his place, and
- (c) shall pay to the Registrar and to the person (if any) appointed to act in his place such salary or remuneration and such allowances (if any) as the Council may determine.

(2) The Council may appoint such other officers and such clerks and servants as it may consider necessary for the purposes of this Act, and shall pay them such salary or remuneration and such allowances (if any) as the Council may determine.

(3) The Registrar shall act as Secretary and Treasurer to the Council.

¹ See foot-note 4 on page 603, ante.

[Ben. Act X

(Sections 14—17.)

The registers of registered nurses, midwives and health visitors.

Orders by
the Council
for main-
tenance of
registers of
registered
nurses,
midwives
and health
visitors.

14. (1) The Council shall, as soon as conveniently may be after the commencement of this Act and from time to time as occasion may require, make orders for regulating the maintenance of a register of registered nurses, a register of registered midwives, and a register of registered health visitors in several parts in which the persons to be registered shall be classified according to qualifications.

(2) The said registers shall be kept in such form as may be prescribed.

Main-
tenance
of the
registers
by the
Registrar.

15. (1) The Registrar shall keep the registers in accordance with the provisions of this Act and of any orders made by the Council, and shall, from time to time, make all necessary alterations in the registered addresses or appointments and in the classification, of the registered nurses, midwives and health visitors and erase the name of any such nurse, midwife or health visitor who is dead.

(2) To enable the Registrar to fulfil the duties imposed upon him by sub-section (1) he may send through the post a letter to any person registered as a nurse, a midwife or a health visitor addressed to him according to his registered address or appointment, to inquire whether he has ceased to practise or whether his residence or appointment has been changed; and if no answer to any such letter is received within a period of six months from its despatch, the Registrar may erase the name of such person from the register in which it is entered:

Provided that any name erased under this sub-section may be re-entered in the register under the direction of the Council.

Erasure of
names
from
registers
on notice
of death.

16. (1) Every Registrar of Deaths who receives notice of the death of any person whose name he knows to be entered in one of the registers, shall forthwith transmit by post to the Registrar of the Council a certificate of such death signed by him and stating particulars of the time and place of death.

(2) On receipt of—

(a) any such certificate, or

(b) any other reliable information regarding such death,

the Registrar of the Council shall erase the name of the deceased person from the register in which it is entered.

Erasure of
fraudulent
and incor-
rect en-
tries in
registers.

17. Any entry in the registers, which is proved to the satisfaction of the Council to have been fraudulently or incorrectly made, may be erased under an order of the Council,

of 1934.]

(Sections 18, 19.)

18. The following persons shall, on payment of such fees as may be prescribed, be entitled to registration under this Act, namely :—

Persons
entitled
to be
registered.

- (a) nurses, midwives and health visitors who have undergone the courses of training, have passed the examinations and fulfil such further conditions as may be prescribed ;
- (b) nurses, midwives and health visitors who are already in practice at the commencement of this Act and are not entitled to registration under clause (a), subject to such conditions and restrictions as may be prescribed :

Provided that nurses and midwives who at the commencement of this Act are enrolled on the registers maintained by the State Medical Faculty of ¹[West Bengal] shall be entitled to have their names transferred according to their qualifications to the appropriate parts of the respective registers to be maintained under this Act without being required to undergo further training and examination and without being required to pay fees.

19. On making an application in the prescribed form and on paying such fee, not being greater than the fee payable on ordinary applications for registration under this Act, as the Council may demand, any person shall be entitled to be registered under this Act who proves to the satisfaction of the Council that he has been registered either as a nurse, a midwife or a health visitor in ²[any part of India outside West Bengal or any part of His Majesty's dominions] in respect of which the Council is satisfied—

Admission
to
register of
persons
trained
in other
parts of
His
Majesty's
dominions.

- (a) that there is in force therein an enactment, or a provision of any kind having the force of law, providing for the registration of nurses, midwives and health visitors under some public authority ;
- (b) that persons registered under this Act are admitted to the register established under the said enactment or provision on terms not less favourable than those contained in this section ;
- (c) that the standard of training and examination required for admission to the register of nurses, midwives or health visitors established under the said enactment or provision is not lower than the standard of training and examination required under this Act :

Provided that, notwithstanding any regulation made under clause (c) of sub-section (1) of section 32, no fee shall be

¹See foot-note 2 on page 608, *ante*.

²These words were substituted for the words "any part of His Majesty's dominions outside Bengal" by paragraph 3 of, and Sch. XI to, the Adaptation of Laws Order, 1950.

(Sections 20, 21.)

chargeable for the registration under this section of a nurse, midwife or health visitor whose name has been registered in a ¹[State] in India between the Government of which and the ²[State Government] the principle of reciprocity of registration has been accepted.

Refusal of registration, removal and re-entry of names.

20. (1) The Council may refuse to permit the registration of any person as a nurse, midwife or health visitor and when he is registered as a nurse, midwife or health visitor may direct the temporary or final removal of his name from the register of nurses, midwives or health visitors on any of the following grounds :—

- (a) that he has been sentenced by any Court for any non-bailable offence, the sentence not having been subsequently reversed or quashed, and his disqualification on account of such sentence not having been removed by an order which the ²[State Government] is hereby empowered to make, if it thinks fit, in this behalf ;
- (b) that he has been guilty of any offence which in the opinion of the Council indicates professional incompetence, negligence, or contravention of regulations ordinarily included in the performance of the duties of nurses, midwives or health visitors ;
- (c) that there are defects in his character which in the opinion of the Council would render the entry or retention of his name on the register undesirable :

Provided that no action shall be taken by the Council under this section until after due inquiry (at which the person concerned has been given an opportunity to be heard in his defence and to appear either in person or by counsel, *vakil*, pleader or attorney, and which at the discretion of the President of the Council may be held *in camera*) he has been found, by a majority of two-thirds of the members present and voting at the meeting, to have been sentenced for any non-bailable offence specified in clause (a) or to have been guilty of an offence, or to have defects in his character, of the nature specified in clause (b) or clause (c).

(2) Any name so removed may afterwards be re-entered in the register and any order of refusal of registration passed under sub-section (1) may be withdrawn under the direction of the Council given by a majority of two-thirds of the members present and voting at the meeting.

Appeal from order under section 20.

21. Any person aggrieved by an order of the Council made under section 20 may, within three months from the date on which notice of such order is given to him, appeal to the ²[State Government] against such order ; and the decision of the ²[State Government] on such appeal shall be final.

¹The word "State" was substituted for the word "Province" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²See foot-note 4 on page 608, *ante*.

of 1934.]

(Sections 22—26.)

Ben. Act
VI of 1914.

22. The certificate of registration under this Act shall not confer upon any person any right or title to be registered under the Bengal Medical Act, 1914, or to assume any title, name or designation implying that he is by law recognised as a medical practitioner, or that he is authorised to grant any medical certificate, or any certificate of death or still-birth, or to undertake the charge of cases of abnormality or disease in connection with parturition.

Registration under this Act not to qualify for registration under the Bengal Medical Act, 1914.

23. (1) Institutions that are approved and recognised by the Council after inspection by its representative shall be competent to train nurses, midwives or health visitors and to send them up for examinations for the qualifying certificates of the Council.

Institutions for training nurses, midwives and health visitors to be recognised by Council.

(2) The Council may withdraw recognition from any such institution after its inspection by a representative of the Council.

24. Any person aggrieved by the refusal of the Council to approve and recognise any institution as competent to train nurses, midwives or health visitors, may, within three months from the date of such refusal, appeal to the ¹[State Government] against such order of refusal. The decision of the ¹[State Government] on such appeal shall be final.

Appeal against refusal to recognise training institutions.

25. No hospital, school or other similar institution which has not been approved or recognised under sub-section (1) of section 23 shall issue to any person a certificate or enter the name of any person on a list, register or other document purporting to show that such person is qualified by having passed any examination or undergone any course of training to practise as a nurse, midwife or health visitor unless such person has been registered under this Act.

Prohibition of issue of certificates and entry of names by unrecognised institutions.

26. (1) The ¹[State Government] may by notification appoint in every district a Supervising Board consisting of such members as may be specified therein to exercise subject to prescribed conditions and restrictions general supervision over nurses, midwives and health visitors within such district and to exercise and perform such other powers and duties as may be prescribed.

Supervising Board.

(2) Until a Supervising Board is appointed under sub-section (1) the Civil Surgeon of the district in consultation with the local authorities shall, subject to prescribed conditions and restrictions, exercise general supervision over nurses, midwives and health visitors, within the district and exercise and perform such other powers and duties as may be prescribed.

¹ See foot-note 4 on page 609, *ante*.

(Sections 27—30.)

Disabilities
of unre-
gistered
persons.

27. After the expiration of five years from the commencement of this Act no dispensary, hospital, infirmary or lying-in hospital which is supported partially or entirely by public funds or local funds shall employ any person as a nurse, midwife or health visitor unless he is registered under this Act or is under training in an institution recognised by the Council :

Provided that the ¹[State Government] may exempt for such period and on such terms as it may fix any such dispensary, hospital, infirmary or lying-in hospital from the operation of this section.

Penalties.

Penalty
for dis-
honest
use of
certificate,
procuring
registra-
tion by
false
means,
and falsi-
fication of
register or
certificate.

28. Any person who—

- (a) dishonestly makes use of any certificate of registration issued under the provisions of this Act to him or to any other person,
- (b) procures or attempts to procure registration under the provisions of this Act by making or producing or causing to be made or produced any false or fraudulent declaration, certificate or representation, whether in writing or otherwise, or
- (c) wilfully makes or causes to be made any falsification in the registers maintained or the certificates issued under the provisions of this Act, or
- (d) being the Secretary, Manager or other officer of a hospital, school or other similar institution issues, or authorises the issue of, a certificate to any person or enters, or authorises the entry of, the name of such person in contravention of section 25,

shall be punished with fine which may extend to three hundred rupees.

Penalty
for unlaw-
ful assump-
tion of
title of
registered
nurse, re-
gistered
midwife or
registered
health
visitor.

29. Any person who, not being a nurse, midwife or health visitor registered under this Act, assumes or uses the name or title of registered nurse, registered midwife, or registered health visitor, or uses any name, title, addition, description, or sign-board, implying that such person is a registered nurse, a registered midwife, or a registered health visitor, as the case may be, shall be punished with fine not exceeding one hundred rupees in the case of a first offence, and with fine not exceeding three hundred rupees in the case of a second or any subsequent offence.

Disposal of fees.

Disposal
of fees.

30. All fees and other moneys received by the Council under this Act shall be applied for the purposes of this Act in such manner as may be prescribed.

¹See foot-note 4 on page 608, ante.

of 1934.]

(Sections 31, 32.)

Annual list of names.

31. (1) The Registrar shall, in every year, on or before a date to be fixed in this behalf by the Council, cause to be printed and published correct lists of the names for the time being entered in the several parts of the registers of registered nurses, midwives and health visitors, setting forth—

Publication and use of annual list of registered nurses, midwives and health visitors.

- (a) all names entered in the several parts of the respective registers, arranged in alphabetical order according to surnames ;
- (b) the registered address or appointment of each person whose name is so entered in the registers ; and
- (c) the registered qualification of each such person and the date on which such qualification was certified.

(2) Every Court shall presume that any person whose name is entered in the latest of such lists is duly registered under this Act, and that any person whose name is not so entered is not registered under this Act :

Provided that, in the case of any person whose name does not appear in such printed lists, a certified copy, signed by the Registrar, of the entry of the name of such person in a register of nurses, midwives or health visitors, shall be evidence that such person is registered under this Act :

Provided also that a certificate purporting to be signed by the Registrar stating that the name of a person borne on the printed register of nurses, midwives or health visitors, as the case may be, has been removed from such register and specifying the date of such removal shall be evidence that such person is not registered under this Act and of the date from which he ceased to be so registered.

Regulations and rules.

32. (1) In addition to the power conferred by section 11, the Council may, with the previous sanction of the ¹[State Government], make regulations—

Regulations by the Council.

- (a) for regulating the courses of training for nurses, midwives and health visitors, the recognition of institutions competent to undertake such training, the conduct of examinations of trained nurses, midwives and health visitors and the remuneration, if any, of examiners ;

¹ See foot-note 4 on page 603, ante.

[Ben. Act X

(Section 33.)

- (b) for regulating the issue of certificates, the maintenance of registers and the conditions and restrictions of admission thereto under section 18 and for prescribing the form of application for such admission ;
 - (c) for prescribing the fees for admission to examination, for registration and for the re-entry of names erased or removed from the registers ;
 - (d) for regulating the publication of the lists of registered nurses, midwives and health visitors ;
 - (e) for regulating the payment of fees and travelling expenses to members under section 12 ;
 - (f) for regulating the expenditure of the Council and providing for the audit of their accounts.
- (2) All such regulations shall be published in the '[Official Gazette].

Rules by
the State
Govern-
ment.

33. (1) The '[State Government] may make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the '[State Government] may make rules—

- (a) to regulate elections under clauses (k), (l) and (m) of section 4 and to ensure that the term of office of all members elected at the first constitution or any re-constitution of the Council should begin on the same date ;
- (b) to prescribe the qualifications of candidates for employment as Registrar ;
- (c) to prescribe the form of the registers of registered nurses, midwives and health visitors to be maintained under section 14 ;
- (d) to regulate, supervise and restrict within due limits the practice of registered nurses, midwives and health visitors ;
- (e) to regulate the procedure to be followed by the Council—
 - (i) in conducting an inquiry referred to in the proviso to section 20 ;
 - (ii) in making a re-entry in the registers of nurses, midwives and health visitors of the names of persons removed from the respective registers and in withdrawing an order of refusal of registration passed on a nurse, midwife or health visitor ; and

* See foot-note 1 on page 604, ante.

* See foot-note 4 on page 608, ante.

of 1934.]

(Sections 34—38.)

- (iii) in disposing of appeals from the decisions of the Council preferred under sections 21 and 24 ;
 - (f) to regulate the inspection of, and the manner of keeping registers of, institutions referred to in section 23 ;
 - (g) to prescribe the powers and duties of, and the conditions and restrictions of general supervision by the Supervising Boards and Civil Surgeons under section 26 ; and
 - (h) to regulate the application of fees levied under this Act and of other moneys received by the Council for the purposes of this Act.
- (3) All such rules shall be published in the ¹[*Official Gazette*].

Miscellaneous.

Act XLV
of 1860.

34. Every person appointed under sub-section (1) or sub-section (2) of section 13 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Certain persons to be public servants.

35. No suit or other legal proceeding shall lie against any person for anything done or intended to be done in good faith under this Act.

Protection to persons acting in good faith.

36. No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Offences triable by a Presidency Magistrate or a Magistrate of the first class.

37. No Magistrate shall take cognizance of any offence punishable under this Act except upon complaint made by order of the ²[State Government], or upon complaint made, with the previous sanction of the ²[State Government], by the Council.

Cognizance of offences.

38. Nothing in this Act shall apply to medical practitioners possessing qualifications entitling them to registration under the Bengal Medical Act, 1914.

Act not to apply to medical practitioners.

Ben. Act
VI of 1914.

¹See foot note 1 on page 604, *ante*.

²See foot-note 4 on page 608, *ante*.

Bengal Act XII of 1934

(THE BENGAL WATERWAYS ACT, 1934.)

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Bengal Act XII of 1934

(THE BENGAL WATERWAYS ACT 1934.)

ADAPTED	...	{	(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
			(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
			(c) The Adaptation of Laws Order, 1950.

(21st June, 1934.)

An Act to provide for the maintenance and improvement of waterways in Bengal.

WHEREAS it is expedient to make better provision for the maintenance and improvement of waterways in Bengal for purposes of navigation ;

AND WHEREAS it is expedient that a Board of Trustees should be constituted and invested with special powers for carrying out the objects of this Act ;

AND WHEREAS the previous sanction of the Governor-General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

5 & 6 Geo.
V, c. 61 ; 6
& 7 Geo.
V, c. 37 ; 9
& 10 Geo.
V, c. 101.

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Waterways Act, 1934.

Short title,
commence-
ment and
extent.

(2) It shall come into force on such date as the ²[State Government] may, by notification, appoint.

(3) It extends to the whole of ³[West Bengal].

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1933, Pt. IV, page 135 ; and for report of the Select Committee, see *ibid*, 1934, Pt. IV, page 28 ; and for proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLII, No. 1, page 282, and *ibid*, Vol. XLIII, No. 2, pages 168, 187, 235 and 284 and *ibid*, No. 3, pages 28, 65 and 111.

²The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words were substituted for the word "Bengal" by Art. 8(9) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

[Ben. Act XII

(Chapter I.—Preliminary.—Sec. 2.)

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "Board" means the Bengal Waterways Board constituted under this Act ;
- (b) "Chairman" means the Chairman of the Board ;
- (c) "channel" includes any river, *beel*, *khal*, *nulla*, or waterway, whether natural or artificial ;
- (d) "District Board" means a District Board constituted under the Bengal Local Self-Government Act of 1885 ;
- (e) "district member" means a person elected under section 11 by a district committee to represent the district committee on the Board ;
- (f) "goods" includes wares and merchandise of every description ;
- (g) "line of navigation" means any navigable channel subject to the provisions of this Act or of the Canals Act 1864 ;
- (h) "Local Board" means a Local Board constituted under the Bengal Local Self-Government Act of 1885 ;
- (i) "navigable channel" means any channel which is navigable during the whole or a part of the year by a vessel of two-foot draught or over ;
- (j) "notification" means a notification published in the ¹[*Official Gazette*] ;
- (k) "owner" of a vessel includes a company owning the vessel, and also includes the managing director or principal officer of such company and the principal servant of an owner, who are resident in ²[West Bengal] ;
- (l) "Port Commissioners" means the Commissioners for the Port of Calcutta, constituted under the Calcutta Port Act 1890 ;
- (m) "steam vessel" means every description of vessel propelled, wholly or in part, by mechanical power ;
- (n) "Union Board" means a Union Board established under the Bengal Village Self-Government Act, 1919 ; and
- (o) "vessel" includes any raft or craft, timber, bamboos or floating materials, propelled in any manner.

Ben. Act
III of
1885.

Ben. Act
V of 1864.

Ben. Act
III of 1890.

Ben. Act
V of 1919.

¹These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 3 on page 628, *ante*.

of 1934.]

(Chapter II.—The West Bengal Waterways Board.—Secs. 3—7.)

CHAPTER II.

THE ¹[WEST BENGAL] WATERWAYS BOARD.

Constitution of the Board.

3. The duty of carrying out the provisions of this Act shall, subject to the conditions and limitations hereinafter contained, be vested in a Board to be called "The ¹[West Bengal] Waterways Board"; and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

Creation and incorporation of the Board.

4. The Board shall consist of twelve Trustees and of such district members, not exceeding three in number, as may from time to time be elected under section 11.

Constitution of the Board.

5. The twelve Trustees shall be—

- (a) a Chairman ;
- (b) the Chairman of the Port Commissioners or a person appointed under section 7 ;
- (c) a member of the Bengal Chamber of Commerce ;
- (d) two members of such bodies as may be nominated from time to time by the ²[State Government] as representing the interests of the Indian Mercantile Community ;
- (e) two members of the ¹[West Bengal] Legislative ³[Assembly] ;
- (f) two representatives of the District Boards ;
- (g) three persons to be appointed by the ²[State Government], of whom not more than one shall be appointed to represent the interests of persons carrying on the business of transport by water within the jurisdiction of the Board.

Appointment of Trustees.

6. The first Chairman shall be appointed by the ²[State Government] by notification and subsequent Chairmen shall be appointed by the ²[State Government] after consultation with the Board :

The Chairman.

Provided that when the ²[State Government] appoints an official, he shall be an officer drawing a salary of not less than one thousand five hundred rupees a month.

7. The Chairman of the Port Commissioners shall be a Trustee *ex-officio*. With the consent of the Port Commissioners, he may appoint another person in his place to perform his duties as a Trustee.

The Chairman of the Port Commissioners.

¹ See foot-note 3 on page 623, *ante*.

² See foot-note 2 on page 623, *ante*.

³ This word was substituted for the word "Council" by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter II.—The West Bengal Waterways Board.—Secs. 8—10.)

Election of
other
Trustees.

8. (1) The member of the Bengal Chamber of Commerce referred to in clause (c) of section 5 shall be elected by that Chamber.

(2) The members referred to in clause (d) of section 5 shall be elected by the bodies mentioned therein.

(3) The members of the ¹[West Bengal] Legislative ²[Assembly] referred to in clause (e) of section 5 shall be elected by ballot by the members of the ¹[West Bengal] Legislative ²[Assembly].

(4) The representatives of the District Boards referred to in clause (f) of section 5 shall be elected by the District Boards.

(5) The Secretary to the Bengal Chamber of Commerce, the Secretary to the ¹[West Bengal] Legislative ²[Assembly], an officer appointed in this behalf by the bodies referred to in clause (d) of section 5 and, in the case of the District Boards, an officer appointed in this behalf by the ³[State Government], shall respectively make a return, in duplicate, to the Chairman or, if there is no Chairman, to the ³[State Government], setting forth the name in full of every person elected under this section ; and the said return shall be published by notification under the signature of the Chairman or, if there is no Chairman, shall be published by notification by the ³[State Government].

(6) The election under sub-section (1), sub-section (2) and sub-section (4) shall be regulated by rules made under section 129.

First
elections.

9. Notwithstanding anything contained in this Act the ³[State Government] may issue such orders as it may consider necessary to enable the first elections referred to in sub-section (1), sub-section (2) and sub-section (4) of section 8 to be held after the commencement of this Act and in regard to any matter incidental and ancillary thereto.

Appoint-
ment in
default of
election.

10. (1) If any of the bodies of electors referred to in section 8 does not, by such date as may be prescribed by rule made in that behalf under section 129, elect a person to be a Trustee, the ³[State Government] shall, by notification, appoint—

(a) a person belonging to such body, or

(b) Where such body is the ¹[West Bengal] Legislative ²[Assembly] and the said ²[Assembly] has been dissolved, such person as it thinks fit to be a Trustee.

(2) Notwithstanding anything contained in sub-section (1), if a person cannot be elected under sub-section (3) of section 8 by the prescribed date by reason of the fact that the ¹[West Bengal] Legislative ²[Assembly] is not in session or has been dissolved the election shall be held during the next session, and the ³[State Government] may, by notification, appoint a member of the said ²[Assembly], or, if the ²[Assembly] has been dissolved, such person as it thinks fit, to be a Trustee for the intervening period.

¹See foot-note 3 on page 623, ante.

²See foot-note 3 on page 625, ante.

³See foot-note 2 on page 623, ante.

of 1934.]

(Chapter II.—*The West Bengal Waterways Board.*—Secs. 11, 12.)

(3) A person appointed under this section shall be deemed to be a Trustee as if he had been duly elected under section 8.

11. A district member shall be elected by a district committee to represent the committee on the Board for the consideration of a district scheme or for the consideration under proviso (c) to section 68 of a major work other than a district scheme :

Election of a district member by a district committee.

Provided that if more than three districts are concerned in one and the same district scheme, the Chairman shall decide which three districts shall elect district members for the purpose of such scheme.

12. (1) A person shall be disqualified for being appointed or elected a Trustee or a district member if he—

Disqualifications for being appointed or elected a Trustee or district member.

- (a) has been convicted by any Court for any non-bailable offence or any offence which, in the opinion of the ¹[State Government], involves moral turpitude, provided that such conviction is not subsequently reversed or set aside, or such disqualification is not removed by an order which the ¹[State Government] is hereby empowered to make in this behalf if it thinks fit ; or
- (b) is of unsound mind ; or
- (c) is an undischarged insolvent ; or
- (d) holds any office or place of profit under the Board ; or
- (e) has, directly, or indirectly by himself or by any partner, employer or employee, and share or interest in any contract or employment with, by, or on behalf of, the Board or carries on the business of transport by water within the jurisdiction of the Board ; or
- (f) is a director, or a secretary, manager or other salaried officer, of any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of, the Board or carries on the business of transport by water within the jurisdiction of the Board.

(2) But a person shall not be disqualified as aforesaid, or be deemed to have any share or interest in such contract or employment as aforesaid, by reason only of his having a share or interest in—

- (i) any sale, purchase, lease or exchange of land, or any agreement for the same ; or
- (ii) any agreement for the loan of money, or any security for the payment of money only ; or
- (iii) any newspaper in which any advertisement relating to the affairs of the Board is inserted ; or

¹See foot-note 2 on page 623, *ante*.

[Ben. Act XII]

(Chapter II.—The West Bengal Waterways Board.—
Secs. 13—15.)

- (iv) the occasional sale to the Board, to a value not exceeding two thousand rupees in any one financial year, of any article in which he trades ;

or by reason only of his having a share or interest, otherwise than as a director, or secretary, manager or other salaried officer, in any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of, the Board or carries on the business of transport by water within the jurisdiction of the Board.

(3) Notwithstanding anything contained in sub-section (1), a person appointed under clause (g) of section 5 to represent the interests of persons carrying on the business of transport by water shall not be disqualified as aforesaid by reason only of his carrying on such business or being a director or salaried officer of any company carrying on such business.

The Chairman of the Board:

Term of
appointment
of the Chair-
man.

13. The Chairman shall be appointed for a term of three years, and may be re-appointed for a further term or terms each not exceeding two years.

Remuner-
ation of
Chairman.

14. (1) The Chairman shall receive such pay not exceeding two thousand five hundred rupees *per mensem* as may be fixed by the ¹[State Government].

²(2) The word “pay”, as used in this section, does not include any contribution payable on account of a Chairman who is a servant of the ³[Government] under the rules regulating his transfer to foreign service.

(3) The ¹[State Government] may, if it thinks fit, direct the payment to the Chairman of a house-rent allowance, not exceeding two hundred rupees *per mensem*, in addition to his pay, and shall determine on what scale and subject to what conditions he may draw travelling allowance.

The Chair-
man to be
a whole-
time
officer.

15. While any person is holding the office of Chairman for which he receives pay he shall not hold any other salaried office, and, subject to any exceptions, permitted by the ¹[State Government], shall devote his whole time and attention to his duties under this Act.

¹ See foot-note 2 on page 628, *ante*.

² Sub-section (2) was substituted for the original sub-section (2) by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³ The word “Government” was substituted for the word “Crown” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1934.]

*(Chapter II.—The West Bengal Waterways Board.—
Sections 16—20.)*

16. Notwithstanding anything contained in this Act, the ¹[State Government] may, if it thinks fit, appoint a person to be Chairman without pay for one or more periods each not exceeding one year.

Appointment of unpaid Chairman.

17. (1) The ¹[State Government] may, after consultation with the Board, grant leave of absence to the Chairman, or depute him to other duties, for such period as it thinks fit.

Leave of absence or deputation of the Chairman.

(2) The allowance (if any) to be paid to the Chairman while absent on leave or deputation shall be such amount, not exceeding his pay, as may be fixed by the ¹[State Government] :

Provided that, if the Chairman is ²[a servant of the Government], the amount of such allowance shall be such as he may be entitled to ³[under the conditions of his service under the Government regulating his transfer to foreign service].

18. (1) Whenever the Chairman is granted leave of absence or deputed to other duties, the ¹[State Government] may appoint a person to act as Chairman.

Appointment, etc., of acting Chairman.

(2) The pay and house-rent allowance or any other allowance (if any) of any person appointed to act as Chairman shall be fixed by the ¹[State Government], subject to the provisions of sections 14 and 16.

(3) Any person appointed to act as Chairman shall exercise the powers and perform the duties conferred and imposed by and under this Act on the Chairman, and shall be subject to the same liabilities, restrictions and conditions as the Chairman.

19. If at any time it appears to the ¹[State Government] that the Chairman has shown himself to be unsuitable for his office, or has been guilty of any misconduct or neglect which renders his removal expedient, it may, by notification, declare that the Chairman shall cease to hold office as such.

Removal of the Chairman.

The Trustees.

20. The Board may permit any Trustee, other than the Chairman, the Chairman of the Port Commissioners or a person appointed under section 7, to absent himself from meetings of the Board for any period not exceeding six months.

Leave of absence to other Trustees.

¹ See foot-note 2 on page 623, *ante*.

² The words "a servant of the Crown" were originally substituted for the words "a Government officer" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³ The words "under the conditions of his service under the Crown regulating his transfer to foreign service" were originally substituted for the words "under any general or special orders of the Government for regulating the transfer of Government servants to foreign service" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act XII]

*(Chapter II.—The West Bengal Waterways Board.—
Sections 21—23.)*Removal
of
Trustees.

21. (1) The ¹[State Government] may, by notification, declare that any Trustee shall cease to be a Trustee—

- (a) if he has been absent from, or is unable to attend, the meetings of the Board for any period exceeding six consecutive months, or
- (b) if he has, without the permission of the Board, been absent from three consecutive meetings of the Board.

(2) The ¹[State Government] shall, by notification, declare that a Trustee shall cease to be a Trustee—

- (i) if he has become disqualified for appointment or election as a Trustee for any of the reasons mentioned in section 12 ; or
- (ii) if he was elected or appointed as being a member of the ²[West Bengal] Legislative ³[Assembly], the Bengal Chamber of Commerce, a District Board or a body referred to in clause (d) of section 5 and if he is, at the date of such notification, no longer a member of such ³[Assembly], Chamber, Board or body, as the case may be ; or
- (iii) if he has acted in contravention of section 36.

Filling
of casual
vacancies
in certain
cases.

22. If any Trustee is permitted by the Board to absent himself from meetings of the Board for any period exceeding three months, or if any Trustee, other than the Chairman of the Port Commissioners, dies, or resigns the office of Trustee, or ceases to hold the office of Trustee in pursuance of a notification published under section 21, the vacancy shall be filled, within one month, by a fresh election or appointment under section 8 or section 10, as the case may be.

Term of
office of
Trustees.

23. (1) The term of office of the first Trustees elected or appointed under section 8 or section 10 shall commence on such day as may be appointed by the ¹[State Government].

(2) Subject to the provisions of sub-section (2) of section 10 and section 21, the term of office of Trustees (other than the Chairman and the Chairman of the Port Commissioners) shall be as follows :—

- (a) a Trustee appointed or elected in pursuance of section 22 in the place of a Trustee who has been permitted to absent himself from meetings of the Board—the period of the absence of the latter Trustee ;
- (b) other Trustees—three years.

¹See foot-note 2 on page 628, ante.

²See foot-note 3 on page 623, ante.

³See foot-note 3 on page 625, ante.

of 1934.]

*(Chapter II.—The West Bengal Waterways Board.—
Sections 24, 25.)*

(3) Any Trustee shall, if not disqualified for any of the reasons mentioned in section 12, be eligible for re-appointment or re-election at the end of his term of office.

Officers and servants.

24. The Board shall from time to time determine—

- (a) the number, designations and grades of the officers and servants (other than employees who are paid by the day or whose pay is directly charged to work) whom they consider it necessary and proper to employ for the purposes of this Act :

Provided that the engineering staff of the Board shall include a Chief Engineer and one or more Executive Engineers to be designated Waterways Executive Engineers,

- (b) the amount and nature of the pay, fees and allowances to be paid to each such officer and servant.

25. The Board shall from time to time make rules—

- (a) fixing the amount and nature of the security to be furnished by any officer or servant of the Board from whom it may be deemed expedient to require security ;
- (b) for regulating, the grant of leave of absence, leave allowances and acting allowances to the officers and servants of the Board ; and
- (c) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Board (other than any ¹[servant of the Government] in respect of whom a contribution is paid under section 136) to contribute to such fund, at such rates and subject to such conditions as may be prescribed by such rules, and for supplementing such contributions out of the funds of the Board :

Provided that a ²[servant of the Government] employed as an officer or servant of the Board shall not be entitled to leave or leave allowances otherwise than as may be prescribed in ³[the conditions of his service under the Government regulating his transfer to foreign service].

¹The words "servant of the Crown were originally substituted for the words "servant of the Government," by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "servant of the Crown" were originally substituted for the words "Government servant" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³The words "the conditions of his service under the Crown regulating his transfer to foreign service" were originally substituted for the words "any general or special orders of the Government for regulating the transfer of Government servants to foreign service" by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Strength
and
remunera-
tion of
staff.

Board to
make
rules.

[Ben. Act XII]

(Chapter II.—The West Bengal Waterways Board.—
Sections 26—29.)

Powers of
appoint-
ment, etc.,
in whom
vested.

26. Subject to any orders made by the Board under section 24 and any rules made under section 25, and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Board, and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct shall be vested—

(a) in the case of officers and servants holding posts the maximum monthly pay of which does not exceed one hundred and fifty rupees—in the Chairman, and

(b) in other cases—in the Board :

Provided that any officer or servant holding a post the maximum monthly pay of which exceeds fifty rupees, who is reduced, suspended or dismissed by the Chairman, may appeal to the Board, whose decision shall be final.

State
Govern-
ment to
sanction
certain
posts, etc.

27. (a) The creation or abolition of any post the maximum monthly pay of which exceeds five hundred rupees,

(b) all rules made under clause (b), or clause (c) of section 25, and

(c) all orders passed by the Board under section 26 and relating to any officer appointed to hold a post the maximum monthly pay of which exceeds five hundred rupees, except orders granting leave to, or suspending, any such officer,

shall be subject to the previous sanction of the ¹[State Government].

Control by
Chairman.

28. The Chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the Board, and, subject to the provisions of this Act, shall dispose of all questions relating to the service of the said officers and servants, and their pay, privileges and allowances.

Delegation
of certain
of Chair-
man's
functions.

29. (1) The Chairman may, by general or special order in writing, delegate to any officer of the Board any of the Chairman's powers, duties or functions under this Act or any rule made thereunder, except those conferred or imposed upon, or vested in him by sections 30, 32, 34, 39, 85, 101, 174, 108, 110 and 137 :

Provided as follows :—

(a) the Chairman shall not delegate his power under section 26 to make appointments to any office the maximum monthly pay of which exceeds fifty rupees ;

¹ See foot-note 2 on page 628, ante.

of 1934.]

(Chapter III.—Conduct of business.—Sections 30—32.)

(b) the Chairman shall not delegate to any officer his power under section 26 to grant leave to, or to reduce, suspend, dismiss, or dispense with the services of, any employee, unless such employee was appointed by such officer by virtue of a delegation of the Chairman's powers of appointment conferred by that section.

(2) The exercise or discharge by any officer of any powers, duties or functions delegated to him under sub-section (1) shall be subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the Chairman.

CHAPTER III.

CONDUCT OF BUSINESS.

30. (1) An ordinary meeting of the Board shall be held at least once in every month.

Meetings
of the
Board.

(2) The Chairman may, whenever he thinks fit, and shall, upon the written request of not less than two other Trustees, call a special meeting.

31. Subject to the provisions of sections 11, 66, 68 and 72 district members shall be summoned, in accordance with rules made under section 129, to attend meetings of the Board at which district schemes are to be considered.

District
members
to be
summoned
to attend
certain
meetings
of the
Board.

32. (1) The Chairman shall attend every meeting of the Board unless absent on leave or prevented by sickness or other reasonable cause.

The
Chairman
to attend
every
meeting
of the
Board.

(2) No business shall be transacted at any meeting unless at least five Trustees other than the Chairman are present from the beginning to the end of the meeting :

Provided that if a quorum is not present within half an hour after the time appointed for a meeting, or at any time during a meeting, the meeting shall stand adjourned to some future day to be appointed by the Chairman. At such adjourned meeting, or at any subsequent adjourned meeting at which the same business is to be transacted, the Chairman and two other Trustees present shall form a quorum.

(3) The person to preside at a meeting shall be the Chairman, or, in his absence from any meeting, the Trustees present shall choose one of their number to preside.

(4) All questions shall be decided by a majority of votes of the Trustees and district members, if any, present, the person presiding having a second or casting vote in all cases of equality of votes.

[Ben. Act XII**(Chapter III.—Conduct of business.—Sections 33, 34.)**

(5) If a poll be demanded, the names of the Trustees and district members voting, and the nature of their votes, shall be recorded by the person presiding.

(6) Minutes of the names of the Trustees and district members present, and of the proceedings, at each meeting shall be kept in a book to be provided for the purpose, which shall be signed at the next ensuing meeting by the person presiding at such meeting and shall be open to inspection by any Trustee or member of a district committee during office hours.

Constitution and functions of committees.

33. (1) The Board may from time to time appoint committees, consisting of such persons of any of the following classes as they may think fit, namely :—

- (i) Trustees,
- (ii) members of district committees,
- (iii) other persons whose assistance or advice the Board may desire :

Provided that no committee shall consist of less than three persons.

(2) The Board may—

- (a) refer to such committees, for enquiry and report, any matter relating to any of the purposes of this Act, and
- (b) delegate to such committees, by specific resolution and subject to any rules made under section 129, any of the powers or duties of the Board.

(3) The Board may at any time dissolve, or subject to the proviso to sub-section (1), alter the constitution of, any such committee.

(4) Every such committee shall conform to any instructions from time to time given to them by the Board.

(5) All proceedings of any such committee shall be subject to confirmation by the Board.

Meetings of committees.

34. (1) Committees appointed under section 33 may meet and adjourn as they think proper ; but the Chairman may, whenever he thinks fit, call a special meeting of any committee, and shall call a special meeting of any committee upon the written request of not less than two members thereof.

(2) The person to preside at a meeting of a committee shall be the Chairman, if he is a member of the committee, or, if he is not a member, the Board shall appoint a member of the committee to preside. If the Chairman or the person so appointed, as the case may be, is absent the members present shall choose one of their number to preside.

(3) No business shall be transacted at any meeting of a committee unless at least half the number of the members of the committee are present from the beginning to the end of the meeting.

of 1934.]

(Chapter III.—Conduct of business.—Sections 35, 36.)

(4) All questions at any meeting of a committee shall be decided by a majority of votes of the members present, the person presiding having a second or casting vote in all cases of equality of votes.

45. (1) Subject to the provisions of sub-sections (2) and (3)—

(a) every Trustee, and every district member, attending a meeting of the Board shall be entitled to receive a fee of sixteen rupees, and every member of a committee appointed under section 33 shall be entitled to receive a fee of eight rupees, for each meeting of the Board or the committee—

Fees and travelling allowance for attendance at meetings.

(i) at which business is transacted, and

(ii) which he attends from the beginning to the end thereof, or for such period as the person presiding at the meeting may consider sufficient to justify the payment of the fee :

Provided that no ¹[servant of the Government] shall be entitled to any fees for attending a meeting.

(b) Trustees, district members and members of committees appointed under section 33 shall be entitled to receive travelling allowance, in such cases and at such rates as may be prescribed by rules made under section 129, for attending meetings of the Board or of a committee.

(2) Neither the Chairman, if he be a whole-time paid officer, nor any officer or servant of the Board shall be entitled to receive any fee or travelling allowance under this section.

(3) The aggregate amount of fees and travelling allowance payable under this section to any person in respect of meeting of any kind held during any month shall not exceed such sum as may be prescribed by rules made under section 129.

46. (1) A Trustee or a district member who—

(a) has, directly or indirectly, by himself or by any partner, employer or employee, any such share or interest as is described in sub-section (2) of section 12 in respect of any matter, or

(b) has acted professionally, in relation to any matter on behalf of any person having therein any such share or interest as aforesaid,

Trustees and district members not to take part in proceedings of the Board in which they are personally interested.

shall not vote or take any other part in any proceeding of the Board relating to such matter.

¹See foot-note 2 on page 681, *ante*.

(Chapter III.—Conduct of business.—Sections 37—39.)

Power to
make and
perform
contracts.

37. The Board may enter into and perform all such contracts as they may consider necessary or expedient for carrying out any of the purposes of this Act.

Execution
of
contracts
and
approval
of
estimates.

38. (1) Every estimate of expenditure shall be sanctioned and every contract shall be made on behalf of the Board by the Chairman or other officer of the Board in accordance with rules made under section 129 :

Provided that an estimate or contract for a project or for a work chargeable to a particular project, shall not be sanctioned or made without the approval of—

- (a) the Board, if such estimate or contract involves expenditure of more than ten thousand rupees,
- (b) the ¹[State Government], if such estimate or contract involves expenditure of more than fifty thousand rupees :

Provided further that the total amount of such estimates sanctioned in respect of works chargeable to a particular project shall not exceed the estimated cost of the total project as approved by the competent authority.

(2) Sub-section (1) shall apply to every variation or abandonment of an estimate or contract as well as to an original estimate or contract.

Supply of
documents
and
informa-
tion to the
Govern-
ment.

39. (1) The Chairman shall furnish the ¹[State Government] with a copy of the minutes of the proceedings of every meeting of the Board within ten days after the person presiding has signed such minutes under sub-section (6) of section 32.

(2) The Chairman, if so required by the ¹[State Government] shall furnish it with—

- (a) a copy of any paper laid before the Board for consideration at any meeting ; or
- (b) any return, statement, estimate, statistics or other information regarding any matter under the control of the Board ; or
- (c) a report on any such matter ; or
- (d) a copy of any document in the charge of the Chairman.

¹ See foot-note 2 on page 623, ante.

of 1934.)

(Chapter IV.—Powers and duties of the Board.—Sections 40, 41.)

CHAPTER IV.

POWERS AND DUTIES OF THE BOARD.

40. (1) The Board shall take charge of such machinery, tools, dredgers, vessels and their equipment as the ¹[State Government] may make over to them free of cost, subject to such restrictions as regards sale or disposal thereof as may be determined by the ¹[State Government], and subject to such financial arrangements as may be made between the Board and the ¹[State Government] as regards maintaining, or repairing the same. The Board shall thereupon bear all necessary expenses in maintaining, repairing, altering, improving or working the same :

Provided that—

- (a) the Board shall not be liable to pay any interest on the capital cost of such articles or to repay any loan incurred by the ¹[State Government] for the purchase thereof ;
- (b) if any such articles are employed on work for the ¹[State Government], it shall pay to the Board only the actual working expenses incurred by them.

(2) The ¹[State Government] may, by notification, declare which of the navigable channels, other than canals as defined in the Bengal Irrigation Act, 1876, and the navigation works and the lands, buildings, locks, sluices and other works appertaining thereto held by or under the control or administration of the ¹[State Government] shall, for the purposes of this Act, be controlled and administered by the Board :

Provided that no navigable channel within such limits as may have been declared under the Indian Ports Act, 1908, to be the limits of the ²[Port of Calcutta], and of the navigable rivers and channels leading to the ³[said port] shall be placed under the control and administration of the Board.

41. The Board may—

- (a) with the previous sanction of the ¹[State Government], assume the control and administration of any other channel, not being a canal as defined in the Bengal Irrigation Act, 1876, and not held by or under the control or administration of the ¹[State Government], and maintain it for the purposes of this Act :

Provided that if, under the provisions of the Canals Act, 1864, any local authority or person has constructed or improved a navigable channel or has been

The Board to control and administer navigable channels and navigation works with lands, etc., appertaining to them.

Power of the Board in regard to navigable channels.

Ben. Act
III of 1876.

XV of
1908.

Ben. Act
V of 1864.

¹See foot-note 2 on page 623, *ante*.

²These words were substituted for the words "Ports of Calcutta and Chittagong" by Art. 3(1) of, and the Schedule to, the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³These words were substituted for the words "said ports", *ibid*.

[Ben. Act XII**(Chapter IV.—Powers and duties of the Board.—Section 41.)**

appointed to collect tolls on any line of navigation, the Board on assuming control of such navigable channel or line of navigation shall pay such compensation to the local authority or person as the Collector may decide, and shall thereupon become entitled to collect such tolls :

Provided further that an appeal shall lie to the Commissioner from a decision of the Collector on the question of compensation within sixty days from the date thereof and subject to the result of such appeal the decision of the Collector shall be final ;

(b) for the purposes of this Act—

- (i) make and open new navigable channels,
- (ii) clear, widen, deepen, divert or otherwise improve existing channels which are under the control and administration of the Board,
- (iii) construct locks, sluices, wharves, jetties, landing stages, warehouses, sheds, sidings, towpaths and other works, whether protective or otherwise,
- (iv) provide dredgers and other plant;
- (v) clear or destroy water-hyacinth in any district where there are navigable channels under the control and administration of the Board, and
- (vi) do all other acts necessary for the making and maintenance of such channels or for the safety and convenience of navigation or for improvement of waterways :

Provided that the ¹[State Government] may prohibit any such action if it considers that it is likely to cause damage or to be detrimental to agriculture or public health :

Provided also that the Board shall not do any act in contravention of the provisions of section 76 of the Bengal Embankment Act, 1882, without the previous sanction of the officer mentioned therein ;

Ben. Act
II of 1882.

- (c) with the previous sanction of the ¹[State Government], turn, divert, abandon or close any channel under the control and administration of the Board ;
- (d) construct, purchase, or hire offices, toll-houses, quarters for officers and servants and any other building required for the operations of the Board ;
- (e) control navigation and traffic upon lines of navigation which are under the control and administration of the Board, and employ such establishment as may be necessary for the purpose ;

¹ See foot-note 2 on page 623, *ante*.

of 1934.]

(Chapter IV.—Powers and duties of the Board.—Chapter V.—
District committees.—Sections 42—47.)

(f) contribute towards the cost of any work which is executed or to be executed by another authority and is likely to improve a line of navigation under the control of the Board or to benefit navigation.

42. If the ¹[State Government] is of opinion that any channel which is under the control and administration of the Board under section 40 or section 41 should be under the control and administration of the ¹[State Government] for any purpose other than navigation, it may—

Power of State Government to control channels in certain cases.

(a) withdraw such channel from the control and administration of the Board and assume control thereof both for navigation and such other purpose, or

(b) impose conditions for the purpose of regulating or restricting the powers of the Board in respect of such channel.

43. It shall be the duty of the Board to make surveys and observations and to record hydraulic and tidal data in respect of all channels under their control and such other places as may be necessary for the maintenance of complete records of such channels.

Duty of the Board to make surveys, etc.

44. The Board may enter into an agreement with any person for the purchase by the Board from such person of any land which the Board are authorised to acquire, or any interest in such land, or for taking on lease such land or interest therein from such person.

Power to purchase or lease by agreement.

1 of 1894.

45. The Board may, with the previous sanction of the ¹[State Government], acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act.

Power to acquire land under the Land Acquisition Act, 1894.

46. The Board may retain, or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by them :

Power to dispose of land.

Provided that the Board shall not lease or otherwise alienate any such land for any period exceeding three years without the previous sanction of the ¹[State Government].

CHAPTER V.

DISTRICT COMMITTEES.

47. In every district in which the ¹[State Government] so directs a district committee shall be formed, consisting of the following members, namely :—

Formation of a district committee.

(a) the District Magistrate, *ex-officio* ;

(b) the Chairman of the District Board, *ex-officio* ;

¹See foot-note 2 on page 628, *ante*.

(Chapter V.—District committees.—Sections 48—50.)

- (c) the District Engineer, *ex-officio* ;
- (d) the Waterways Executive Engineer, *ex-officio*, or a person appointed under section 48 ;
- (e) not more than three members to be appointed by the ¹[State Government] ;
- (f) four members to be elected in the manner prescribed by rules made under section 129 by the District Board of whom two shall be members of Union Boards in the district who are not members of the District Board ; and
- (g) if the district contains any municipality which includes any navigable channel within its limits, one member to be elected, in the manner prescribed by rules made under section 129, by the Commissioners of such municipality or municipalities :

Provided that the ¹[State Government] may direct that the number of municipal representatives to be elected shall be increased from one to two or three.

48. With the consent of the Board, the Waterways Executive Engineer may appoint another person to perform his duties as a member of the district committee.

Appoint-
ment of
member
in place
of Water-
ways
Executive
Engineer.

49. (1) If a body of electors referred to in clause (f) or, where applicable, clause (g) of section 47 does not, within such period as may be prescribed by rules made under section 129, elect a person to be a member of the district committee, the ¹[State Government] shall, by notification, appoint a person belonging to such body to be a member of the district committee.

Appoint-
ment in
default of
election.

(2) A person appointed under this section shall be deemed to be a member of the district committee as if he had been duly elected under section 47.

50. A person shall be disqualified for being appointed or elected a member of the district committee if he is disqualified for appointment or election as a Trustee for any of the reasons mentioned in section 12 :

Disquali-
fications
for being
appointed
or elected a
member
of the
district
committee.

Provided that a Waterways Executive Engineer or a person appointed under section 48 shall not be disqualified from being a member of the district committee by reason only of his employment under the Board.

¹See foot-note 2 on page 623, ante.

of 1934.]

(Chapter V.—District committees.—Sections 51—56.)

51. The ¹[State Government] shall, by notification, declare that any member of the district committee shall cease to be a member of such committee—

Removal
of
members
of district
com-
mittees.

(a) if he has become disqualified for appointment or election as a member of the committee for any of the reasons mentioned in section 12, or

(b) if he was elected as being a member of a Union Board and if he is, at the date of such notification, no longer a member of such Union Board.

52. If an appointed or elected member of the district committee dies, resigns, or ceases to be a member in pursuance of a notification published under section 51, the vacancy shall be filled within one month by a fresh appointment or election, under section 47 or section 49, as the case may be.

Filling
of casual
vacancies.

53. Subject to the provisions of section 51, the term of office of the members referred to in clauses (e), (f) and (g) of section 47 shall be three years and any such member shall, if not disqualified for any of the reasons mentioned in section 12, be eligible for reappointment or re-election, as the case may be, at the end of his term.

Term of
office of
members
of district
com-
mittees.

54. The Chairman of the district Committee shall be elected by the committee.

The Chair-
man of the
district
committee.

55. The District Engineer shall be the Secretary of the district committee.

The
Secretary
of the
district
committee.

56. It shall be the duty of the district committee—

Duties
of district
committec.

(a) to collect information concerning the internal channels of the district, and, with the assistance of the Waterways Executive Engineer, to make preliminary investigations into any proposal for the improvement of such channels for the purposes of navigation which in their opinion should be investigated ;

(b) to submit to the Board any proposal for which, in the opinion of the district committee, a detailed project should be prepared ;

(c) to report on any proposal which may be sent by the Board to them for their opinion ;

(d) to report to the Board their opinion regarding any detailed project which may be sent to them by the Board ;

¹See foot-note 2 on page 628, *ante*.

[Ben. Act XII]

(Chapter V.—District committees.—Chapter VI.—Execution of works.—Sections 57—62.)

- (e) to elect a district member to represent the district committee at any meeting of the Board to which they may be required by the Board to send a district member ; and
- (f) generally to assist the Board in carrying out the purposes of this Act.

Travelling allowance of members of district committee.

57. Every member of the district committee, other than an officer or servant of the Board, shall be entitled to receive such travelling allowance as may be prescribed by rules made under section 129.

Procedure for meetings of the district committee.

58. The conduct of business and proceedings of the district committee, including the number of meetings to be held, the manner of giving notice of meetings, the fixing of a quorum, the due record of proceedings and all other necessary matters, shall be regulated by rules made under section 129.

CHAPTER VI.

EXECUTION OF WORKS.

Classification of works.

59. For the purposes of this Act works shall be classified as—

- (a) maintenance works ;
- (b) new works ;

in accordance with rules made under section 129.

Power of Board to sanction and execute maintenance works.

60. The Board may, subject to the provisions of section 38, sanction and execute all maintenance works without reference to any other authority.

Major and minor works.

61. New works shall be divided into—

- (a) minor works, costing not more than ten thousand rupees, and
- (b) major works, costing more than ten thousand rupees.

District schemes and other schemes.

62. New works shall also be divided into—

- (a) district schemes, and
- (b) other schemes.

A district scheme is a scheme for a new work for the improvement or extension of the internal navigable channels within a district or districts.

The decision of the Board as to whether a scheme is a district scheme or not shall be final.

of 1934.]

(Chapter VI.—Execution of works.—Sections 63—68.)

63. If any proposal for a district scheme is received by the Board from any person or body other than a district committee, they shall send the proposal to the district committee.

Proposal for a district scheme to be sent to district committee.

64. The district committee, on receiving a proposal for a district scheme from the Board or from any other body or person, shall either reject the scheme or send it to the Waterways Executive Engineer for report.

Procedure of district committee on receipt of proposal.

65. After considering the Waterways Executive Engineer's report, and making such further investigation as they may deem fit, the district committee shall either reject the proposal or submit it to the Board with their recommendation regarding the preparation of a detailed project, together with the report of the Waterways Executive Engineer and any opinion which any other member of the district committee may record for the consideration of the Board.

Procedure of district committee on receipt of waterways Executive Engineer's report.

66. On receiving the recommendation of the district committee, the Board shall either reject the proposal or direct the Chief Engineer to prepare a detailed project :

Procedure of Board on receipt of district committee's recommendation.

Provided that no order which is substantially contrary to the recommendation of the district committee shall be passed by the Board until the matter in issue has been placed before a meeting of the Board to which a district member has been summoned from such district committee.

67. When a detailed project for a district scheme, or for any major work which is not a district scheme, has been prepared it shall be sent to the district committee of every district in which any portion of the work is proposed to be executed. Each such district committee shall record its opinion and submit it to the Board within such time not being less than one month as may be fixed by the Chairman.

Detailed project to be sent to district committee for opinion.

68. On receiving the opinion of the district committee on the detailed project or on the expiry of the period mentioned in section 67, the Board shall either reject the scheme or approve it :

Procedure of Board in dealing with a detailed project.

Provided that—

(a) if the scheme is a district scheme which is a minor work, no order which is substantially contrary to the opinion received by a district committee shall be passed by the Board until the scheme has been considered at a meeting to which a district member has been summoned from such district committee ;

(Chapter VI.—Execution of works.—Sections 69—71.)

(b) if the scheme is a district scheme which is a major work, a district member from the district committee of each district in which any portion of the work is to be executed shall, subject to the provisions of section 11, be summoned to attend the meeting or meetings at which it is to be considered ;

(c) if the scheme is a major work which is not a district scheme and a district committee in submitting their opinion under section 67 have recorded an objection to the scheme, the scheme, the Board shall not approve the scheme unless it has been considered at a meeting to which a district member from such district committee has been summoned ; or, if the objection of the district committee is that the scheme ought not to be approved unless it is modified in a particular manner, the Board may approve the scheme as so modified, after informing the other district committees consulted under section 67, and after considering any objection to the modification which may be received from them within such time as may be fixed by the Chairman.

Power of Board to sanction schemes for minor works.

69. Subject, in the case of minor work which is a district scheme, to the provisions of sections 67 and 68, the Board may sanction any scheme for a minor work without reference to any other authority.

Publication of particulars of detailed projects for major works.

70. Such particulars as may be prescribed by rules made under section 129 of all detailed projects for major works, whether such works are district schemes approved under section 68 or other schemes, shall be published by notification for general information, and copies of the notification shall be sent forthwith to the ¹[State Government].

Procedure after publication of particulars of a detailed project.

71. After the expiry of a period of two months from the date of the publication of the notification under section 70 and after considering any objections which may have been received, the Board—

(a) in the case of major work estimated to cost not more than one lakh of rupees in respect of which no objection has been received from the ¹[State Government], shall either sanction the execution of the scheme or pass such other orders as they may think fit ;

(b) in the case of a major work estimated to cost not more than one lakh of rupees in respect of which an objection has been received from the ¹[State Government], and in the case of a major work estimated to cost more than one lakh of rupees, shall reject or abandon the scheme or sanction the execution of the scheme after having received the approval of the ¹[State Government] :

¹See foot-note 2 on page 628, ante.

of 1934.]

(Chapter VI.—Execution of works.—Chapter VII.—
Taxation.—Sections 72—76.)

Ben. Act II
of 1882.

Provided that nothing contained in this Act shall authorise the Board to sanction or execute any work contrary to a prohibition under the first proviso to clause (b) of section 41, or without previous sanction under clause (c) of that section or in contravention of the provisions of section 76 of the Bengal Embankment Act, 1882.

72. A district member from the district committee of each district in which any portion of the work is proposed to be executed, shall, subject to the provisions of section 11, be summoned to any meeting of the Board at which a district scheme which is a major work is to be dealt with under section 71.

District members to be summoned to certain meetings of the Board.

CHAPTER VII.

TAXATION.

Ben. Act V
of 1864.

73. All navigable channels under the control of the Board shall be deemed to be navigable channels notified by the ¹[State Government] under section 2 of the Canals Act, 1864, and the provisions of the said Act shall apply to and be in force as regards all such channels.

The Canals Act, 1864, to apply to navigable channels.

74. Notwithstanding anything contained in the Canals Act 1864, the Board shall, in respect of all lines of navigation under their control, discharge the functions of the person appointed to collect tolls under the Canals Act, 1864, and of the supervisor of a line of navigation under that Act.

The Board to discharge certain functions under the Canals Act, 1864.

75. The Board may require the owner of every steam-vessel used for the transport of passengers or of goods on lines of navigation under the control of the Board—

Tax on the owners of steam-vessels.

(a) to pay to the Board such percentages on the fare received in respect of such passengers, or such rate according to the number of such passengers, as may be prescribed by the Board with the sanction of the ¹[State Government],

(b) to pay to the Board such percentages on the freight received in respect of such goods or of any class of such goods, or such rate according to weight, quantity or volume of such goods, or any class of such goods, as may be prescribed by the Board with the sanction of the ¹[State Government].

76. (1) The owner of every steam-vessel referred to in section 75 shall prepare and deliver, or cause to be prepared and delivered, to the Chairman a return for every quarter showing in the form prescribed by rules made under section 129 all passengers and goods or other articles carried by such vessel, on account of whom or which the tax imposed by section 75 is payable, and shall subscribe, at the foot of such return, a declaration of the truth thereof.

Owners of steam-vessels to furnish quarterly returns.

¹ See foot-note 2 on page 628, ante.

(Chapter VII.—Taxation.—Sections 77—79.)

(2) Every such return shall be delivered to the Chairman or posted to his address within two months after the end of the quarter to which it relates.

(3) If this Act comes into force during a quarter, the first of the said returns shall be made for the unexpired portion of that quarter.

Inquiry
and
certificate
by
Chairman
as to
amount
of tax due.

77. (1) The Chairman may direct an inquiry to be made by an officer of the Board in order to ascertain the amount received by the owner of any steam-vessel referred to in section 75 on account of passengers and goods, or the number of passengers, or the weight, quantity or volume of goods or any class of goods, carried by the vessel during any quarter and on receiving the report of such officer may certify the amount due from the owner. A copy of the certificate shall be served on the owner by post, and the owner shall thereupon be liable, subject to the provisions of sub-sections (2) and (3), to pay the certified amount together with any amount payable as penalty on a conviction under section 148.

(2) An owner from whom any amount has been certified under sub-section (1) to be due may appeal to the ¹[State Government], within thirty days after the service of the copy of the certificate, to cancel or modify such certificate and the ¹[State Government] after calling for such information and causing such inquiry, if any, to be made as it thinks fit, shall determine the amount, if any, for which the owner shall be liable and shall cancel, modify or confirm the certificate accordingly.

(3) where an owner has appealed to the ¹[State Government] under sub-section (2) he shall not be liable, pending the orders of the ¹[State Government] on the appeal, to pay to the Board any part of the amount in respect of which the certificate has been made, except such part as he admits to be due from him to the Board.

Manner
and
time of
payment
of tax.

78. Every amount due from the owner of a steam-vessel in respect of any tax imposed under section 75 shall be paid in such manner and within such period as may be prescribed by rules made under section 129.

Power
of Board
to levy
licence
fees.

79. (1) With the previous sanction of the ¹[State Government] the Board may, by notification, give notice of their intention to levy licence fees in respect of any class of vessel using any line of navigation under the control of the Board.

(2) Every notification issued under sub-section (1) shall be published at such places and for such period as the ¹[State Government] may fix, and shall specify—

- (a) the licence fee which it is proposed to impose ;
- (b) the place of collection of such fee ; and

¹See foot-note 2 on page 623, *ante*.

of 1934.]

(Chapter VII.—Taxation.—Chapter VIII.—Finance.—
Sections 80—83.)

(c) the time within which any objections to the proposal may be submitted to the Board by persons interested.

(3) After the expiry of the time mentioned in clause (c) of sub-section (2) and after considering any objections which may have been received, the Board may impose the proposed licence fee with or without modification.

80. The Board shall appoint such persons as they may think fit to collect licence fees under this Act.

The Board to appoint persons to collect licence fees.

81. (1) If any licence fee due under the provisions of this Act in respect of any vessel is not paid on demand to the person authorised to collect the same, such person may seize such vessel, and any furniture thereof, and detain the same until the fee is paid.

Enforcement of payment of licence fees.

Ben. Act V
of 1834.

(2) Where any vessel is seized under sub-section (1), the provisions of section 9 of the Canals Act, 1864, shall be applicable, and the vessel and the furniture thereof shall be liable to be sold, as if the vessel had been seized for failure to pay a toll under that Act.

CHAPTER VIII.

FINANCE.

Loans.

82. The Board may from time to time borrow, at such rate of interest, and for such period, and upon such terms, as to the time and method of repayment and otherwise, as the ¹[State Government] may approve, any sum necessary for the purpose of—

Power of Board to borrow money.

(a) meeting expenditure debitable to the capital account under section 115, or

(b) repaying any loan previously taken under this Act.

* * * * *

83. Whenever the borrowing of any sum has been approved under section 82, the Board may, instead of borrowing such sum or any part thereof from the public, but subject to any direction given by the ¹[State Government], take credit from any Bank, on a cash account to be kept in the name of the Board, to the extent of such sum or part ;

Loans from Banks.

and, with the previous sanction of the ¹[State Government], may grant mortgages of all or any property vested in the Board by way of securing the payment of the amount of such credit or of the sums from time to time advanced on such cash account with interest.

¹See foot-note 2 on page 623, ante.

²The proviso was omitted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

(Chapter VIII.—Finance.—Sections 84—88.)

Diversion of borrowed money to purposes other than those first approved.

84. When any sum of money has been borrowed under section 82 or section 83 for the purpose of meeting particular expenditure or repaying a particular loan no portion thereof shall be applied to any other purpose without the previous sanction of the ¹[State Government].

Form, signature, exchange, transfer and effect of debentures.

85. (1) Whenever money is borrowed by the Board on debentures, the debentures shall be in such form as the Board, with the previous sanction of the ⁴[State Government], may from time to time determine.

(2) All debentures shall be signed by the Chairman and one other Trustee.

(3) The holder of any debenture in any form prescribed under sub-section (1) may obtain in exchange therefor, upon such terms as the Board may from time to time determine, a debenture in any other form so prescribed.

(4) Every debenture issued by the Board shall be transferable by endorsement, unless some other mode of transfer be prescribed therein.

(5) The right to sue in respect of moneys secured by debentures issued by the Board shall vest in the respective holders of the debentures for the time being, without any preference by reason of some of such debentures being prior in date to others.

Signature of coupons attached to debentures.

86. All coupons attached to debentures issued under this Act shall bear the signature of the Chairman ; and such signature may be engraved, lithographed or impressed by any mechanical process.

Payment to survivors of joint payees.

87. When any debenture or security issued under this Act is payable to two or more persons jointly, and either or any of them dies, then, notwithstanding anything contained in section 45 of the Indian Contract Act, 1872, the debenture or security shall be payable to the survivor or survivors of such persons :

IX of 1872.

Provided that nothing in this section shall affect any claim by the representative of a deceased person against such survivor or survivors.

Receipt by joint holder for interest or dividend.

88. Where two or more persons are joint holders of any debenture or security issued under this Act, any one of such persons may give an effectual receipt for any interest or dividend payable in respect of such debenture or security, unless notice to the contrary has been given to the Board by any other of such persons.

¹See foot-note 2 on page 628 ante.

of 1934.]

(Chapter VIII.—Finance.—Sections 89—92.)

89. All payments due from the Board for interest on, or the repayment of, loans, shall be made in priority to all other payments due from the Board.

Priority of payments for interest and repayment of loans.

90. Every loan taken by the Board under section 82 shall be repaid within the period approved by the ¹[State Government] under that section, and, subject to the provisions of sub-section (2) of section 117, by such of the following methods as may be so approved, namely :—

Repayment of loans taken under section 82.

- (a) from a sinking fund established under section 91 in respect of the loan, or
- (b) by paying equal yearly or half-yearly instalments of principal, or of principal and interest, throughout the said period, or
- (c) if the Board have, before borrowing money on debentures, reserved, by public notice, a power to pay off the loan by periodical instalments and to select by lot the particular debentures to be discharged at particular periods—then by paying such instalments at such periods, or
- (d) from money borrowed for the purpose under clause (b) of section 82, or
- (e) partly from the sinking fund established under section 91 in respect of the loan and partly from money borrowed for the purpose under clause (b) of section 82.

91. (1) Whenever the ¹[State Government] have approved the repayment of a loan from a sinking fund, the Board shall establish such a fund and shall pay into it every year, until the loan is repaid, a sum so calculated that, if regularly paid throughout the period approved by the ¹[State Government] under section 82, it would, with accumulations in the way of compound interest, be sufficient, after payment of all expenses, to pay off the loan at the end of that period.

Establishment and maintenance of sinking funds.

(2) The rate of interest on the basis of which the sum referred to in sub-section (1) shall be calculated shall be such as may be prescribed by the ¹[State Government].

92. Notwithstanding anything contained in section 91, if at any time the sum standing at credit of the sinking fund established for the repayment of any loan, is of such amount that, if allowed to accumulate at the rate of interest prescribed under sub-section (2) of that section, it will be sufficient to repay the

Power to discontinue payments into sinking fund.

¹See foot-note 2 on page 628, *ante*.

(Chapter VIII.—Finance.—Sections 93—95.)

loan at the end of the period approved by the ¹[State Government] under section 82, then, with the permission of the ¹[State Government] further annual payments into such funds may be discontinued.

Investment of sinking fund.

93. (1) All money paid into any sinking fund shall as soon as possible be invested, under the orders of the Board, in—

- (a) Government securities, or
- (b) securities guaranteed ²[by the Central or the State Government], or
- (c) Calcutta Municipal debentures, or
- (d) debentures issued by the Port Commissioners, or
- (e) debentures issued by the Board,

in the joint names of the Secretary to the Government of ³[West Bengal] in the Finance Department and the Accountant-General, ³[West Bengal], to be held by them as trustees for the purpose of repaying from time to time the debentures issued by the Board.

(2) All dividends and other sums received in respect of any such investment shall, as soon as possible after receipt, be paid into the appropriate sinking fund and invested in the manner prescribed by sub-section (1).

(3) Any investment made under this section may, from time to time, subject to the provisions of sub-section (1), be varied or transposed.

Application of sinking fund.

94. The aforesaid trustees may from time to time apply any sinking fund or any part thereof, in or towards the discharge of the loan or any part of the loan for which such fund was established and until such loan is wholly discharged shall not apply the same for any other purpose.

Annual statement by trustees.

95. (1) The aforesaid trustees shall, at the end of every financial year, transmit to the Chairman a statement showing—

- (a) the amount which has been invested during the year under section 93,
- (b) the date of the last investment made previous to the transmission of the statement,

¹ See foot-note 2 on page 628, *ante*.

² The words "by the Central or the Provincial Government" were originally substituted for the words "by the Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³ See foot-note 8 on p. 628, *ante*.

of 1934.]

(Chapter VIII.—Finance.—Sections 96—98.)

- (c) the aggregate amount of the securities held by them,
- (d) the aggregate amount which has, up to the date of the statement, been applied under section 94 in or towards repaying loans, and
- (e) the aggregate amount already paid into each sinking fund.

(2) Every such statement shall be laid before the Board and published by notification.

96. (1) The said sinking funds shall be subject to annual examination by the Accountant-General, ¹[West Bengal], who shall ascertain whether the cash and the current value of the securities at credit of such funds are actually equal to the amount which would have accumulated had investments been regularly made and had the rate of interest as originally estimated been obtained therefrom.

Annual examination of sinking funds.

(2) The Board shall forthwith pay into any sinking fund any amount which the Accountant-General may certify to be deficient, unless the ²[State Government] specially sanctions a gradual readjustment.

Enforcement of liabilities.

97. (1) If the Board fail—

- (a) to pay any interest due in respect of any loan taken in pursuance of section 82, or
- (b) to make any payment prescribed by section 90, section 91 or sub-section (2) of section 96, or
- (c) to make any investment prescribed by section 93,

Procedure if Board fail to make any payment or investment in respect of loans.

the ²[State Government] may take possession of any money or other assets, movable or immovable, belonging to the Board and of all rents and other income of the Board, and out of the aforesaid funds, assets or income may direct the Accountant-General, ¹[West Bengal], to make such payment or set aside and invest such sums as ought to have been invested under the said section 93.

Contributions.

98. There shall be payable by the ²[State Government] to the Board during the first five years after the commencement of this Act an annual contribution of not less than

Government contribution.

See foot-note 3 on page 623, ante.

See foot-note 2 on page 623, ante.

[Ben. Act XII

(Chapter VIII.—Finance.—Sections 99—102.)

two lakhs and fifty thousand rupees payable in equal instalments on the first day of each quarter and after the expiry of the above period such annual contribution as may be determined from time to time by the ¹[State Government] :

Provided that on the representation of the Board or otherwise the ¹[State Government] may raise its contribution to any sum larger than the amount provided in this section.

Contribution by the Port Commissioners for any work beneficial to the Port of Calcutta.

99. Notwithstanding anything contained in the Calcutta Port Act, 1890, or in any other Act, the Port Commissioners may, with the previous sanction of the ²[Central Government], pay from the funds of the Port Commissioners to the Board a contribution towards the cost of any work executed or to be executed by the Board which in the opinion of the ³[Central Government] will be directly or indirectly beneficial to the Port of Calcutta.

Ben. Act
III of 1890.

Manner of payment of contribution for the first quarter.

100. If this Act is directed to come into force during a quarter, the first instalment of the contribution payable under section 98 shall bear such proportion to the sum payable thereunder as the unexpired portion of that quarter bears to the whole quarter.

Budget estimates.

Estimates of income and expenditure to be laid annually before the Board.

101. (1) The Chairman shall, at a special meeting to be held in the month of January in each year, lay before the Board an estimate of the income and expenditure of the Board for the next ensuing financial year.

(2) Every such estimate shall make provision for the due fulfilment of all the liabilities of the Board and for the efficient administration of this Act.

(3) Every such estimate shall differentiate capital and revenue funds, and shall be prepared in such form, and shall contain such details, as the ¹[State Government] or the Board may from time to time direct.

(4) Every such estimate shall be completed and printed, and a copy thereof sent, by post or otherwise, to each Trustee at least ten clear days before the date of the meeting at which the estimate is to be laid before the Board.

Sanction of Board to estimates.

102. The Board shall consider every estimate so laid before them, and shall sanction the same, either without alteration or with such alterations as they may think fit.

¹ See foot-note 2 on page 628, *ante*.

² These words were substituted for the words "Local Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1934.]

(Chapter VIII.—Finance.—Sections 103—106.)

103. (1) Every such estimate, as sanctioned by the Board, shall be submitted to the ¹[State Government], who may, at any time within two months after receipt of the same,—

Approval of State Government to estimates.

(a) approve the estimate, or

(b) disallow the estimate or any portion thereof, and return the estimate to the Board for amendment.

(2) If any estimate is so returned to the Board, they shall forthwith proceed to amend it, and shall re-submit the estimate, as amended, to the ¹[State Government], who may then approve it.

104. (1) A special meeting of the Board shall be held as soon as may be expedient after the day appointed under sub-section (1) of section 23 and the Chairman shall at such special meeting lay before the Board an estimate of the income and expenditure of the Board for the portion of the financial year which on the said day had not expired.

Special provisions as to the first estimate after the constitution of the Board.

(2) The provisions of sub-sections (2) to (4) of section 101 and sections 102 and 103 shall apply to the said estimate.

105. (1) The Board may, at any time during the year for which any estimate has been sanctioned, cause a supplementary estimate to be prepared and laid before them at a special meeting.

Supplementary estimates.

(2) The provisions of sub-sections (3) and (4) of section 101 and sections 102 and 103 shall apply to every supplementary estimate.

106. (1) No sum shall be expended by or on behalf of the Board unless the expenditure of the same is covered by a current budget-grant or can be met by re-appropriation or by drawing on the closing balance.

Adherence to estimate and maintenance of closing balance.

(2) The closing balance shall not be reduced below one lakh of rupees without the previous sanction of the ¹[State Government].

(3) The following items shall be excepted from the provisions of sub-sections (1) and (2), namely :—

(a) re-payments of moneys belonging to contractors or other persons and held in deposit, and of moneys collected by, or credited to, the Board by mistake ;

(b) payments due under a decree or order of a Court passed against the Board or against the Chairman *ex-officio*, or under an award by a Court under the Land Acquisition Act, 1894 ;

[Ben. Act XII]

(Chapter VIII.—Finance.—Sections 107—109.)

(e) sums payable under a compromise of any suit or other legal proceeding or claim effected under section 137 ;

(d) sums payable under this Act by way of compensation ;
and

(e) payments required to meet some pressing emergency.

(4) Whenever any sum exceeding five thousand rupees is expended under clause (e) of sub-section (3), the Chairman shall forthwith report the circumstances to the ¹[State Government], and shall at the same time explain how the Board propose to cover the expenditure.

Banking and Investments.

Receipt of
moneys,
and
deposit in
the Impe-
rial Bank
of India or
a Govern-
ment
treasury.

107. (1) All moneys payable to the Board shall be received by the Chairman, and shall forthwith be paid into the Imperial Bank of India or a branch thereof or into a Government treasury to the credit of an account to be called "The ¹[West Bengal] Waterways Board Fund."

(2) The Chairman may, on behalf of, and with the sanction of, the Board transfer any money at the credit of the said account between the Imperial Bank of India, such of its branches and such Government treasuries as the Board may from time to time determine.

Invest-
ment of
surplus
money.

108. (1) Surplus moneys at the credit of the said account may from time to time be—

(a) deposited at interest in the Imperial Bank of India or in any other Bank in Calcutta approved by the ¹[State Government] in this behalf, or

(b) invested in any of the securities or debentures mentioned in sub-section (1) of section 93 of this Act or in section 20 of the Indian Trusts Act, 1882.

II of 1882.

(2) All such deposits and investments shall be made by the Chairman on behalf of, and with the sanction of, the Board; and, with the like sanction, the Chairman may at any time withdraw any deposit so made, or dispose of any securities, and re-deposit or re-invest the money so withdrawn or the proceeds of the disposal of such securities.

Payments
by cheque.

109. (1) No payment shall be made by the Imperial Bank of India, or any of its branches or a Government treasury out of the account referred to in section 107, except upon a cheque.

¹See foot-note 2 on page 623, *ante*.

²See foot-note 3 on page 623, *ante*.

of 1934.]

(Chapter VIII.—Finance.—Sections 110—112.)

(2) Payment of any sum due by the Board exceeding one hundred rupees in amount shall be made by means of a cheque, and not in any other way.

110. (1) All orders for making any transfer under sub-section (2) of section 107 or for making any deposit, investment, withdrawal or disposal under section 108 shall be signed—

Signature of orders under sections 107 and 108, and cheques.

- (a) by the Chairman and the Secretary to the Board, or
- (b) in the event of the illness or occasional absence from Calcutta of the Chairman or the Secretary, then by the Secretary or the Chairman, as the case may be, and by a Trustee other than the Chairman.

(2) All cheques referred to in section 109 shall be signed—

- (a) by the Chairman and the Secretary to the Board, or
- (b) in the event of the illness or occasional absence from Calcutta of the Chairman or the Secretary, then by the Secretary or the Chairman, as the case may be, and by a Trustee other than the Chairman, or
- (c) in the case of payments which a Waterways Executive Engineer or other officer of the Board may make under rules made under section 129, then by such Engineer or officer, as the case may be.

111. Before the Chairman or any other Trustee or the Secretary or a Waterways Executive Engineer or any other officer of the Board signs a cheque under section 110, he shall satisfy himself that the sum for which such cheque is drawn is required for a purpose or work specifically sanctioned by the Board or is an item of one of the excepted descriptions specified in sub-section (3) of section 106.

Duty of Chairman and others before signing cheques.

Accounts.

112. (1) The expression “cost of management”, as used in the following sections in this chapter, means—

Definition of “cost of management”.

- (a) the pay and house-rent allowance (if any) of the Chairman or acting Chairman, and the contributions referred to in sub-section (2) of section 14 ;
- (b) all fees and travelling allowance paid under section 35, for attendance at meetings ;
- (c) all travelling allowance paid to members of district committees under section 57 ;
- (d) all grants made to the district committees for carrying out the purposes of this Act ;

[Ben. Act XII

(Chapter VIII.—Finance.—Sections 113, 114.)

- (e) the pay, fees and allowances of, and the contributions paid under section 136 in respect of, officers and servants of the Board who are employed in accordance with the provisions of section 24 ;
- (f) the remuneration of other employees of the Board except employees who are paid by the day or whose pay is directly charged to work ;
- (g) the cost, if not chargeable to any specific work, of working launches and other boats maintained by the Board; and
- (h) all office expenses incurred by the Board and by the district committee.

(2) The expression “office expenses”, in clause (h), means expenses incurred for carrying on office work, and includes the rent of offices, the provision of furniture therefor, and charges for printing and stationery.

Keeping
of capital
account
and
revenue
account.

113. (1) The Board shall keep a capital account and a revenue account.

(2) The capital account shall show separately all expenditure incurred by the Board on every work which the Board, with the sanction of the ¹[State Government], may decide to finance from capital account.

Credits to
capital
account.

114. There shall be credited to the capital account—

- (a) all moneys received on account of loans taken by the Board in pursuance of section 82 or section 83 ;
- (b) the proceeds of the sale of any land vested in the Board, or if the cost of the land was paid from revenue account or out of an advance from revenue account, only the portion of the sale proceeds which remains after crediting to the revenue account the sum paid or advanced from it ;
- (c) the proceeds of the sale of any movable property (including tools and plants and securities for money invested from the capital account) belonging to the Board ;
- (d) all lump sums received from the Government or any other source in aid of the capital account ;
- (e) all premia received by the Board in connection with leases for any term exceeding thirty years ;

¹See foot-note 2 on page 623, *ante*.

of 1934.]

(Chapter VIII.—Finance.—Sections 115—117.)

- (f) all moneys resulting from the sale of securities by direction of the ¹[State Government] under section 118 ; and
- (g) all sums (if any) which the ¹[State Government] directs, under sub-section (2) of section 117, to be credited to the capital account.

115. The moneys credited to the capital account shall be held by the Board in trust, and shall be applied to—

Applica-
tion of
capital
account.

- (a) meeting all costs of framing and executing such works as the Board may, with the sanction of the ¹[State Government], decide to finance from capital account ;
- (b) the repayment of loans from money borrowed in pursuance of clause (b) of section 82 ;
- (c) making, or contributing towards the cost of making, surveys, in pursuance of section 145 ;
- (d) meeting such proportion of the cost of management as the Board may, with the sanction of the ¹[State Government], prescribe in this behalf ; and
- (e) temporarily making good the deficit (if any) in the revenue account at the end of any financial year.

116. There shall be credited to the revenue account—

Credits to
revenue
account.

- (a) all proceeds received by the Board of taxes, tolls and fees imposed under Chapter VII ;
- (b) all ²* * * damages and proceeds of confiscations received by the Board under section 153 ;
- (c) all annually recurring sums received from the Government or any other source in aid of the funds of the Board ;
- (d) all premia received by the Board in connection with leases for any term not exceeding thirty years ;
- (e) all rents of land vested in the Board ; and
- (f) all other receipts by the Board which are not required by section 114 to be credited to the capital account.

117. (1) The moneys credited to the revenue account shall be held by the Board in trust, and shall be applied to—

Applica-
tion of
revenue
account.

- (a) meeting all charges for interest and sinking fund due on account of any loan taken in pursuance of clause (a) of section 82, or section 83, and all other charges incurred in connection with such loans ;

¹See foot-note 2 on page 628, *ante*.

²The word "fines" was omitted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

[Ben. Act XII]

(Chapter VIII.—Finance.—Sections 118, 119.)

- (b) paying all sums due from the Board in respect of rates and taxes imposed by a local authority upon land vested in the Board ;
 - (c) paying the cost (if any) of maintaining an establishment for the collection of tolls and revenue due to the Board ;
 - (d) paying all sums which the ¹[State Government] may direct to be paid to any auditor under section 124 ;
 - (e) paying the cost of management, excluding such proportion thereof as may be debited to the capital account under clause (d) of section 115 ;
 - (f) paying the cost of works which the Board, at a meeting, may decide to meet from revenue account ; and
 - (g) paying all other sums due from the Board, other than those which are required by section 115 to be disbursed from the capital account.
- (2) The surplus (if any) remaining after making the payments referred to in sub-section (1) shall,
- subject to the maintenance of a closing ^a balance of one *lakh* of rupees, and
- except as provided in section 119, and
- unless the ¹[State Government] otherwise directs,
- be invested, in the manner prescribed in section 93, towards the service of any loans outstanding after the expiry of sixty years from the commencement of this Act.

Powers to direct sale of securities in which any surplus of the revenue account is invested.

118. If, at any time after any surplus referred to in sub-section (2) of section 117 has been invested, the ¹[State Government] is satisfied that the investment is not needed for the service of any loan referred to in that sub-section, it may direct the sale of the securities held under the investment.

Advances from revenue account to capital account.

119. (1) Notwithstanding anything contained in section 117, the Board may advance any sum standing at the credit of the revenue account for the purpose of meeting capital expenditure.

(2) Every such advance shall be refunded to the revenue account as soon as may be practicable.

¹ See foot-note 2 on page 623, *ante*.

of 1934.]

(Chapter VIII.—Finance.—Sections 120—125.)

120. (1) Any deficit in the revenue account at the end of any financial year may be made good by an advance from the capital account.

Advances from capital account to revenue account.

(2) Every such advance shall be refunded to the capital account in the following financial year.

121. The Board shall submit to the ¹[State Government] at the end of every financial year, an abstract of the accounts of their receipts and expenditure.

Submission of abstracts of accounts to State Government.

122. The accounts of the Board shall, once in every financial year, be examined and audited by such auditor as the ¹[State Government] may appoint in this behalf.

Annual audit of accounts.

123. The auditor so appointed may,—

Powers of auditor.

- (a) by written summons, require the production before him of any document which he may consider necessary for the proper conduct of the audit ;
- (b) by written summons require any person having the custody or control of, or being accountable for, any such document to appear in person before him ; and
- (c) require any person so appearing before him to make and sign a declaration with respect to any such document, to answer any question, or to prepare and submit any statement.

124. The Board shall pay to the said auditor such remuneration as the ¹[State Government] may direct.

Remuneration of auditor.

125. The said auditor shall—

Reports and information to be furnished by auditor to the Board.

- (a) report to the Board any material impropriety or irregularity which he may observe in the expenditure, or in the recovery of moneys due to the Board, or in the accounts, and report the same to the ¹[State Government],
- (b) furnish to the Board such information as they may from time to time require concerning the progress of his audit, and

¹ See foot-note 2 on page 623, ante.

*(Chapter VIII.—Finance.—Chapter IX.—Rules.—
Sections 126—129.)*

- (c) within fourteen days after the completion of his audit, forward his report upon the accounts to the Chairman.

Board to remedy defects pointed out by auditor.

126. It shall be the duty of the Board forthwith to remedy any defects or irregularities that may be pointed out by the auditor.

Auditor's report to be sent to each Trustee and considered by Board.

127. The Chairman shall cause the report mentioned in clause (c) of section 125, to be printed and shall forward a printed copy thereof to each Trustee, and shall bring such report before the Board for consideration at their next meeting.

Publication and submission of an abstract of the accounts.

128. Within two months after the receipt of the said report, or within such longer period as the ¹[State Government] may appoint, the Board shall prepare an abstract of the accounts to which it relates, and shall publish such abstract by notification, and shall send a copy of the abstract to the ¹[State Government].

CHAPTER IX.

RULES.

Further powers to make rules.

129. (1) With the previous sanction of the ¹[State Government] the Board may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Board may make rules—

- (a) regulating elections under sub-sections (1), (2) and (4) of section 8,
- (b) prescribing the date referred to in section 10,
- (c) regulating the summoning of district members to attend meetings of the Board under section 31,
- (d) regulating the delegation of powers and duties of the Board to committees appointed under section 33,
- (e) prescribing the cases in which and the rates at which travelling allowance shall be payable under section 35 and the maximum amount of fees and travelling allowance payable under sub-section (3) of that section,

¹See foot-note 2 on page 623, *ante*.

of 1934.]

(Chapter IX.—Rules.—Section 129.)

- (f) prescribing the officers by whom estimates may be sanctioned and contracts made under section 38,
- (g) regulating navigation and traffic under clause (e) of section 41,
- (h) prescribing the manner in which members are to be elected under clauses (f) and (g) of section 47,
- (i) prescribing the period within which, under section 49, members are to be elected,
- (j) prescribing the travelling allowance payable under section 57,
- (k) regulating the conduct of business and proceedings of the district committee under section 58,
- (l) regulating the classification of works as maintenance works and new works under section 59,
- (m) prescribing the particulars to be published under section 70 of detailed projects for major works,
- (n) prescribing the manner of payment of amounts due in respect of taxes imposed under section 75, and the periods within which such amounts shall be paid,
- (o) prescribing the form of return to be made under section 76,
- (p) prescribing the payments which may be made by a Waterways Executive Engineer or such other officer under section 110,
- (q) prescribing the proportion of the cost of management to be met from capital account under clause (d) of section 115.

(3) In making any rule under sub-section (1) or sub-section (2), the Board may provide that a breach of it shall be punishable—

- (i) with fine which may extend to five hundred rupees, or
- (ii) in case of a continuing breach, with fine which may extend to fifty rupees for every day during which the breach continues after receipt of written notice from the Chairman to discontinue the breach.

(4) If, in the opinion of the ¹[State Government], it is necessary or expedient for the purposes of this Act that any rule should be made under this section and the Board fail to make, or to propose in a form approved by the ¹[State Government], such rule within

¹ See foot-note 2 on page 628, *ante*.

[Ben. Act XII]

(Chapter IX.—Rules.—Sections 130—134.)

such time as the ¹[State Government] may fix, the ¹[State Government] may, subject to the conditions of section 130, itself make such rule. A rule so made shall be deemed to be a rule duly made by the Board under this section.

Conditions precedent to the making of rules.

130. The power to make rules shall be exercised subject to the following conditions :—

- (1) after approval by the ¹[State Government] draft rules shall be published in the ²[Official Gazette] for a period of six weeks ;
- (2) any objections received to the draft rules shall be considered by the ¹[State Government] and the rules, after such modification as may be necessary, shall be finally sanctioned ;
- (3) all rules which have been finally sanctioned shall be published in the ²[Official Gazette] and in such newspapers as the ¹[State Government] may direct, and shall come into effect on the fifteenth day after such publication in the ²[Official Gazette].

Printing and sale of copies of rules.

131. (1) The Chairman shall cause all rules made by the ¹[State Government] under the Canals Act, 1864, for the management of lines of navigation under the control of the Board, and all rules made by the Board under clause (g) of sub-section (2) of section 129, to be printed in English and Bengali, and shall cause printed copies thereof to be delivered to any applicant on payment of a price to be fixed by the Chairman.

Ben. Act V of 1864.

(2) Notice of the fact that copies of rules are obtainable at the said price, and of the place where and the person from whom the same are obtainable, shall be given by the Chairman by advertisement in local newspapers.

Free supply of copies of rules.

132. Copies of the rules described in sub-section (1) of section 131 shall be delivered free to every person paying a licence fee under section 79.

Exhibition of copies of rules.

133. Copies of the rules described in sub-section (1) of section 131 shall be hung up in a conspicuous place in every toll office of the Board.

Power of State Government to cancel rules made under section 129.

134. The ¹[State Government] may, at any time, by notification, cancel any rule made by the Board under section 129.

¹See foot-note 2 on page 623, *ante*.

²See foot-note 2 on page 624, *ante*.

of 1934.]

(Chapter X.—Supplemental provisions.—Sections 135—137.)

CHAPTER X.

SUPPLEMENTAL PROVISIONS.

Status of Trustees, etc.

135. Every Trustee, and every officer and servant of the Board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Trustees,
etc.,
deemed
public
servants.

Act XLV
of 1860.

Contributions towards leave allowances and pensions of Government servants.

136. The Board shall pay such contributions for the leave allowances and pension of any ¹[servant of the Government] employed as Chairman or as an officer or servant of the Board, as may be ²[required, by the conditions of his service under the Government to be made by him or on his behalf].

Contribu-
tions by
Board to-
wards leave
allowances
and pen-
sions of
servants
of the
Govern-
ment
employed
under this
Act.

Legal proceedings.

137. The Chairman may, subject to the control of the Board,—

- (a) institute, defend or withdraw from, legal proceedings under this Act or any rule made thereunder ;
- (b) compound any offence against this Act or any rule made thereunder which, under any law for the time being in force, may lawfully be compounded ;
- (c) admit, compromise or withdraw any claim made under this Act or any rule made thereunder ; and
- (d) obtain or authorise the obtaining of such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or as he may be desired by the Board to obtain, for any of the purposes referred to in this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Board or any officer or servant of the Board.

Powers of
Chairman
as to insti-
tution,
etc., of
legal
proceed-
ings and
obtaining
legal
advice.

¹ See foot-note 2 on page 631, *ante*.

² The words "required, by the conditions of his service under the Crown to be made by him or on his behalf" were originally substituted for the words "prescribed in any general or special orders of the Government for regulating the transfer of Government servants to foreign service" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Ben. Act XII]

(Chapter X.—Supplemental provisions.—Sections 138—142.)

Indemnity
to Board,
etc.,

138. No suit shall be maintainable against the Board, or any Trustee, or any officer or servant of the Board, or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of anything lawfully and in good faith and with due care and attention done under this Act or any rule made thereunder.

Notice of
suit
against
Board, etc.

139. No suit shall be instituted against the Board, or any Trustee, or any officer or servant of the Board or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of any act purporting to be done under this Act or any rule made thereunder, until the expiration of one month next after written notice has been delivered or left at the Board's office or the place of abode of such officer, servant or person, stating the cause of action, the name and place of abode of the intending plaintiff, and the relief which he claims ; and the plaint must contain a statement that such notice has been so delivered or left.

Police.

Arrest of
offenders.

140. On the written application of the Chairman or other officer to whom power has been delegated by the Chairman by general or special order, any police-officer above the rank of constable shall arrest any person who obstructs any officer or servant of the Board in the exercise of any of the powers conferred by this Act or any rule made thereunder.

Evidence.

Proof of
consent,
etc., of
Board or
Chairman
or officer
or servant
of Board.

141. Whenever, under this Act or any rule made thereunder, the doing or the omitting to do anything or the validity of anything depends upon the approval, sanction, consent, concurrence, declaration, opinion or satisfaction of—

- (a) the Board or the Chairman, or
- (b) any officer or servant of the Board,

a written document, signed, in case (a) by the Chairman, and in case (b) by the said officer or servant, purporting to convey or set forth such approval, sanction, consent, concurrence, declaration, opinion or satisfaction, shall be sufficient evidence of such approval, sanction, consent, concurrence, declaration, opinion or satisfaction.

Validation.

Validation
of acts and
proceed-
ings.

142. (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of—

- (a) the existence of any vacancy in, or any defect in the constitution of, the Board or any committee, or
- (b) any person having ceased to be a Trustee, or
- (c) any Trustee or a district member having voted or taken any other part in any proceeding in contravention of section 36, or
- (d) any omission, defect or irregularity not affecting the merits of the case.

of 1934.]

(Chapter X.—Supplemental provisions.—Sections 143—146.)

(2) Every meeting of the Board, the minutes of the proceedings of which have been duly signed, as prescribed in sub-section (6) of section 32, shall be taken to have been duly convened and to be free from all defect and irregularity.

Compensation.

143. In any case not otherwise expressly provided for in this Act, the Board may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested, by this Act or any rule made thereunder, in the Board or the Chairman or any officer or servant of the Board.

General power of Board to pay compensation.

Public notices and advertisements.

144. Every public notice given under this Act or any rule made thereunder shall be in writing over the signature of the Chairman, and shall be widely made known in the locality to be affected thereby, by affixing copies thereof in conspicuous public places within the said locality, or by publishing the same by beat of drum or by advertisement in local newspapers, or by any two or more of these means, and by any other means that the Chairman may think fit.

Public notices how to be made known.

Surveys.

145. The Board may—

- (a) cause a survey of any land to be made, whenever they consider that a survey is necessary or expedient for carrying out any of the purposes of this Act, or
- (b) contribute towards the cost of any such survey made by any other local authority.

Power to make surveys, or contribute towards their cost.

Power of entry.

146. (1) The Chairman, any other Trustee, or an officer of the Board or other person acting under the general or special order of any Trustee or officer of the Board may, with or without assistants or workmen, enter into or upon any land, in order—

Power of entry.

- (a) to make any inspection, survey, measurement, valuation or inquiry,
- (b) to take levels,
- (c) to dig or bore into the subsoil,
- (d) to set out boundaries and intended lines of work,
- (e) to mark such levels, boundaries and lines by placing marks, and cutting trenches, or
- (f) to do any other thing,

[Ben. Act XII

(Chapter X.—Supplemental provisions.—Sections 147, 148.)

whenever it is necessary to do so for any of the purposes of this Act or of any rule made thereunder or of any work or of any inquiry under this Act :

Provided as follows :—

(a) no such entry shall be made between sunset and sunrise ;

(b) no dwelling-house, and no public building or hut which is used as a dwelling place, shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least twenty-four hours' previous written notice of the intention to make such entry.

(2) Whenever the Chairman or other person enters into or upon any land in pursuance of sub-section (1) he shall, at the time of such entry, award compensation for any damage which may be occasioned by any proceeding under this section. Any person dissatisfied with the amount of compensation awarded under this sub-section may appeal to the Board.

(3) Notwithstanding anything contained in this Act, any party dissatisfied with the decision of the Board, may refer the matter to the civil court having jurisdiction in the matter.

Penalties.

Punish-
ment for
acquiring
share or
interest in
contract,
etc., with
the Board.

147. If any Trustee, or any officer or servant of the Board, knowingly acquires, directly or indirectly, by himself or by any partner, employer or employee, otherwise than as such Trustee, officer or servant, any share or interest in any contract or employment with, by, or on behalf of, the Board,

not being a share or interest such as, under sub-section (2) of section 12 it is permissible for a Trustee to have without being thereby disqualified for being appointed a Trustee,

he shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Act XLV
of 1860.

Penalty
for failure
to make
return,
pay tax,
etc.

148. (1) If the owner of any steam-vessel omits to make any return required by section 76 or refuses to sign or complete the same, he shall be punished with fine which may extend to one thousand rupees.

(2) If, after being convicted under sub-section (1), the owner persists in omitting to make, sign or complete a return, he shall be punished with a further fine which may extend to five hundred rupees, for every day during which such omission is continued.

of 1934.]

(Chapter X.—Supplemental provisions.—Sections 149—152.)

(3) If the owner of any steam-vessel fails to pay to the Board within the period prescribed by rules made under section 129 any amount due to the Board in respect of any tax imposed under section 75, he shall be punished with fine which may extend to five hundred rupees for every day during which the amount remains unpaid after the expiry of the said period.

(4) If a return made and delivered under section 76 is false or incorrect in any material particular, the person signing the statement shall be punished with fine which may extend to five hundred rupees.

(5) A prosecution or conviction under this section shall not affect the liability of the offender to a prosecution under section 199 of the Indian Penal Code.

Act XLV
of 1860.

149. Any person who refuses or evades or attempts to evade payment of any toll or licence fee due under this Act shall be punished with fine which may extend to fifty rupees or with imprisonment in lieu of fine which may extend to one month.

Penalty
for
evasion of
payment
of toll or
licence
fee.

150. Any person, who wilfully causes, or aids in causing any obstruction to any line of navigation, or any damage to the banks or works of such line of navigation, or who wilfully omits to remove such obstruction after being lawfully required so to do, shall be punished with simple imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both, and shall also be liable to pay such amount as may be sufficient to meet all reasonable expenses incurred in abating or removing such obstruction, or in repairing such damage, and such amount shall be recovered as a fine.

Penalty
for
obstruction
to line of
navigation.

151. If any person fails to comply with any requisition made under section 123, he shall be punished—

Penalty
for
failure to
comply
with
requisition
made by
auditor.

- (a) with fine which may extend to one hundred rupees ; or
- (b) in case of a continuing failure, with fine which may extend to fifty rupees for each day after the first during which the failure continues.

152. If any person—

Penalty
for
obstructing
contractor
or
removing
mark.

- (a) obstructs or molests any person with whom the Chairman has entered into a contract on behalf of the Board, in the performance or execution by such person of his duty or of anything which he is empowered or required to do by virtue or in consequence of this Act or any rule made thereunder ; or
- (b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorised by this Act or any rule made thereunder,

[Ben. Act XII

(Chapter X.—Supplemental provisions.—Sections 153, 154.)

he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to two months.

Disposal of fines and damages.

Damages
and
proceeds
of confisca-
tions to be
paid to
Board.

153. All ¹* * damages realized, and the proceeds of all confiscations, in cases in which prosecutions are instituted under this Act or any rule made thereunder, shall be paid to the Board.

Control.

Power of
State
Govern-
ment to
control
the
Board.

154. (1)(i) If the Board sanction, execute or attempt to execute any work which in the opinion of the ²[State Government], the Board are not authorized to sanction or execute under this Act, or

(ii) if, in the opinion of the ²[State Government], the Board exceed or abuse their powers, or persistently make default in the performance of any of the duties imposed on them by this Act,

the ²[State Government] may, by an order in writing, take all or any of the following actions, namely :—

- (a) cancel any resolution or order of the Board which is contrary to the provisions of this Act ;
- (b) withhold for such period as it thinks fit the contribution payable to the Board under section 98 ;
- (c) supersede the Board for such period as may be specified in the order.

(2) When an order of supersession has been passed under clause (c) of sub-section (1) the following consequences shall ensue—

- (a) all the Trustees shall, as from the date of the order, vacate their offices as such Trustees,
- (b) all the powers and duties which may, under the provisions of this Act, be exercised and performed by the Chairman and by the Board shall, during the period of supersession, be exercised and performed by such person as the ²[State Government] may direct,

¹The words "fines and" were omitted by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

²See foot-note 2 on page 628, *ante*.

of 1934.]

(Chapter X.—Supplemental provisions.—Section 154.)

(c) all property vested in the Board shall, during the period of supersession, vest in ¹[the State Government].

(3) At any time before the expiration of the period of supersession specified in the order, or on the expiration of such period, the ²[State Government] may reconstitute the Board by a fresh election and fresh appointment, and any of the Trustees who vacated their offices under clause (a) of sub-section (2) may be declared by an order of the ²[State Government] to be disqualified for election or appointment.

¹The words "the Crown for the purposes of the Province" were first substituted for the words "the Government" by para. 3 and Schedule IV of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the words within square brackets were substituted for the words "the Crown for the purposes of the Province" by paragraph 3(1) of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

²See foot-note 2 on page 623, *ante*.

Bengal Act XIII of 1934

THE BENGAL WAKF ACT, 1934.

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Bengal Act XIII of 1934

THE BENGAL WAKF ACT, 1934.¹

Repealed in part	...	Ben. Act XVI of 1946.
Amended	...	<div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle;">Ben. Act IV of 1936.</div> </div> <div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle;">Ben. Act V of 1942.</div> </div>
Adapted	.	<div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle;">(a) The Government of India (Adaptation of Indian Laws) Order 1937.</div> </div> <div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle;">(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.</div> </div> <div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle;">(c) The Adaptation of Laws Order, 1950.</div> </div>

[19th July, 1934.]

An Act to make provision for the proper administration of wakf property in Bengal.

WHEREAS it is expedient to make provision for the proper administration of wakf property in Bengal ;

Preamble

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

5 & 6 Geo.
V, c. 61 ;
6 & 7 Geo.
V, c. 37 ;
9 & 10 Geo.
V, c. 101,

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Wakf Act, 1934.
- (2) It extends to the whole of ^a[West Bengal].
- (3) It shall come into force^b, in whole or in part, on such date

Short title,
extent and
commence-
ment.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 1st September, 1932, Part IV, pages 417-418 ; for Preliminary Report of the Select Committee, see the *Calcutta Gazette*, dated the 2nd March, 1933, Pt. IV, page 58 ; for Report of the Sir Zahid Suhrawardy Committee on the Bill, see *ibid*, dated the 1st June 1933, Pt. IV, pages 81-99 and for Report of the Select Committee, see *ibid*, dated the 24th August, 1933, Pt. IV, pages 186-253 ; and for Proceedings in Council, see the Bengal Legislative Council Proceedings, 1932, Vol. XXXIX, No. 1, pages 269-285, *ibid*, 1933, Vol. XLI, No. 1, page 132, and Vol. XLII, No. 1, page 230, and also *ibid*, 1934, Vol. XLIII, No. 4, pages 36-74, 79-118, 135-170, 179-224 and 237-250.

²These words were substituted for the word "Bengal" by Art. 8(a) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³(a) Sections 1, 2, 6, 33, 43 and 57 [except clauses (e) to (h) of sub-section (1)], 89, 91, 92 and 93 and Chapter IV of the Act came into force on the 15th December, 1934, vide notification No. 2579M., dated the 14th December, 1934, published in the *Calcutta Gazette* of the 20th December, 1934, Part I, page 1960.

(b) Chapter IV of the Act came into force on the 15th December, 1934 for the purpose of making a survey of wakf properties, vide notification No. 2580 Misc. dated 14.12.34, published in the *Calcutta Gazette* of 1934, Part I, page 1960.

(c) Sections 8 and 9, sub-section (1), clause (h) of sub-section (2) and sub-section (3) of section 84 of the Act came into force on the 7th February, 1936, vide notification No. 131 Misc., dated the 16th January, 1936, published in the *Calcutta Gazette* of the 23rd January, 1936, Part I, page 174.

(For further entries relating to the coming into force of the Act, see next page.)

(Chapter 1.—Preliminary.—Sections 2—5.)

as the ¹[State Government] may, by notification, appoint, and for this purpose different dates may be appointed for different provisions of this Act.

Preliminary survey of wakf property.

2. (1) For the purpose of making a survey of wakf properties existing at the date of the commencement of this Act the ¹[State Government] may, by notification, bring Chapter IV into force on such date as may be specified in the notification, and thereupon, notwithstanding anything contained in this Act, the ¹[State Government] may appoint persons, either by name or by their official designation, to perform the duties imposed and exercise the powers conferred by that Chapter on the Commissioner and the Board.

(2) The cost of survey under sub-section (1) shall be paid to the ¹[State Government] from the Wakf Fund when that fund is formed under section 61.

Application.

3. Save as herein otherwise specifically stated this Act shall apply to all wakfs, whether created before or after the commencement of this Act, any part of the property of which is situated in ²[West Bengal] :

Provided that this Act shall not apply to any wakf created by the Dawoodi Bohra community.

Power to exclude wakfs from the operation of this Act.

4. The Board may, with the previous sanction of the ¹[State Government], and subject to rules made by the ¹[State Government] in this behalf, exempt any wakf from all or any of the provisions of this Act.

Exemption of certain wakf properties.

5. The ¹[State Government] may, by notification in the ³[Official Gazette], exempt any wakf property, which has been retained under the superintendence of the Board of Revenue in accordance with the provisions of section 21 of the Religious Endowments Act, 1863, from all or any of the provisions of this Act, for so long as the property remains under such superintendence.

XX of
1863.

(Brought over from previous page)

(d) The whole of the Act (except those sections which have already been brought into force) on the 1st March, 1936, vide notification No. 276Mis., dated the 10th February, 1936, published in the *Calcutta Gazette* of the 18th February, 1936, Part I, page 357.

(e) The whole of the Act came into force in the district of Darjeeling on the 20th July, 1937, vide notification No. 2141Mis., dated the 20th July, 1937, published in the *Calcutta Gazette* of the 29th July, 1937, Part I, page 1999.

¹The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word, "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²See foot-note 2 on page 675, ante.

³These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1934.]

(Chapter 1.—Preliminary.—Section 6.)

6. In this Act, unless there is anything repugnant in the subject or context—

Definitions.

- (1) "beneficiary" used with reference to a wakf-al-al-aulad means a wakif, any member of his family or descendants entitled to receive any pecuniary or other material benefits from such wakf ;
- (2) "benefit" does not include any benefit which a mutwalli is entitled to claim solely by reasons of his being such mutwalli ;
- (3) "Board" means the Board of Wakfs constituted under section 7 ;
- (4) "Commissioner" means the Commissioner of Wakfs appointed under section 16 ;
- (5) "enrolment" means the enrolment of a wakf under section 44 ;
- (6) "mutwalli" means any person appointed either verbally or under any deed or instrument by which a wakf has been created or by a competent authority to be the mutwalli of a wakf and includes a naib-mutwalli or other person appointed by a mutwalli to perform the duties of a mutwalli and, save as otherwise provided in this Act, any person or committee for the time being managing or administering any wakf property as such ;
- (7) "net available income" of a wakf means the income as determined, from time to time, in the manner prescribed by the ¹[State Government] ;
- (8) "person interested in a wakf" means a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has a right to worship or to perform any religious rite in a mosque, *idgah*, *imambarah*, *darga*, *maqbara* or other religious institution connected with the wakf or to participate in any religious or charitable ministrations under the wakf ;
- (9) "stranger to a wakf" means a person other than a person interested within the meaning of clause (8) ;
- (10) "wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Islamic law as pious, religious or charitable and includes a wakf by user ; and
"wakif" means any person making such dedication ;
- (11) "wakf-al-al-aulad" means a wakf under which not less than seventy-five *per cent.* of the net available income is for the time being payable to the wakif for himself or any member of his family or descendants ;
- (12) "wakf deed" means any deed or instrument by which a wakf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied.

¹See foot-note 1 on page 676, *ante*.

(Chapter II.—Constitution of Board and appointment of Commissioner.—Sections 7, 8.)

CHAPTER II.

CONSTITUTION OF BOARD AND APPOINTMENT OF COMMISSIONER.

The Board of Wakfs.

Establish
ment of
Board of
Wakfs.

7. The ¹[State Government] shall, as soon as possible after the commencement of this Act ²establish a Board to be called "the Board of Wakfs," and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

Consti-
tution of
the Board

8. (1) For the first three years after the establishment of the Board under section 7, the Board shall consist of the Commissioner as President and the following members, namely:—

- (a) five members to be appointed by the ¹[State Government] of whom only one shall be a Shia and only one shall be a mutwalli ;
- (b) two members to be elected, in the manner prescribed by the ¹[State Government], by the ³[West Bengal] Legislative ⁴[Assembly] from among the Members of the ⁴[Assembly] ;
- (c) three Shia members to be appointed by the ¹[State Government] :

Provided that the members referred to in clause (c) shall be members of the Board solely in respect of wakfs created by a Shia.

(2) After the said period of three years the Board shall consist of the Commissioner as President and the following members, namely:—

- (a) four members to be appointed by the ¹[State Government] of whom only one shall be a Shia and only one shall be a mutwalli ;
- (b) three members to be elected, in the manner prescribed by the ¹[State Government], by the ³[West Bengal] Legislative ⁴[Assembly] from among the members of the ⁴[Assembly] ;
- (c) one member to be elected, in the manner prescribed by the ¹[State Government], by the mutwallis of enrolled wakfs ;
- (d) three Shia members to be appointed by the ¹[State Government] :

Provided that the members referred to in clause (d) shall be members of the Board solely in respect of wakfs created by a Shia.

¹See foot-note 1 on page 676, *ante*.

²For establishment of a Board called "the Board of Wakfs", see notification No. 1100 Mis., dated 2.4.36, published in the *Calcutta Gazette* of 1936, Part I, page 920.

³See foot-note 2 on page 675, *ante*.

⁴This word was substituted for the word "Council" by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1934.]

Chapter II.—Constitution of Board and appointment of Commissioner.—Sections 9—12.)

(3) If by such date as the ¹[State Government] may fix, any electoral body referred to in sub-section (1) or sub-section (2) fails to elect a person to be a member of the Board, the ¹[State Government] shall appoint a suitable person in his place and any person so appointed shall be deemed to be a member as if he had been duly elected by such body.

9. Every member of the Board shall be a person professing Islam.

Members of the Board to be Muslims.

10. (1) Every member of the Board shall hold office for a term of five years :

Term of office.

Provided that the term of office of a member of the Board referred to in sub-section (1) of section 8 shall be three years.

(2) A member of the Board, notwithstanding the expiration of his term of office, shall continue to hold office until the vacancy caused by the expiration of the said term has been filled.

(3) A person ceasing to be a member by reason of the expiration of his term of office, shall, if otherwise qualified, be eligible for re-appointment or re-election.

(4) If any mutwalli as such appointed, or any member of the ²[West Bengal] Legislative ³[Assembly] as such elected, to be a member of the Board ceases to be a mutwalli or a member of the ²[West Bengal] Legislative ³[Assembly], as the case may be, the ¹[State Government] shall by notification in the ⁴[Official Gazette], declare his place to be vacant :

Provided that an elected member of the Board whose place is declared vacant under this sub-section shall continue as a member of the Board until his successor is elected.

11. The names of the members of the Board shall be published by the ¹[State Government] in the ⁴[Official Gazette].

Appointments and elections to be notified in the Official Gazette.

12. (1) The ¹[State Government] may, by notification in the ⁴[Official Gazette], remove any member of the Board if he—

Removal of members.

(a) refuses to act or becomes incapable of acting as a member of the Board ;

(b) is declared insolvent ;

(c) has been or is convicted of any such offence or has been or is subjected by a Criminal Court to any such order as in the opinion of the ¹[State Government], implies that he is unfitted to continue to be a member of the Board ;

¹See foot-note 1 on page 676, ante.

²See foot-note 2 on page 675, ante.

³See foot-note 4 on page 678, ante.

⁴See foot-note 8 on page 676, ante.

[Ben. Act XIII]

(Chapter II.—Constitution of Board and appointment of Commissioner.—Sections 13—19.)

(d) without excuse sufficient in the opinion of the ¹[State Government], is absent without the consent of the Board from more than six consecutive meetings of the Board.

(2) The ¹[State Government] may fix a period during which any person so removed shall not be eligible for re-appointment or re-election.

Resig-
nation of
members.

13. A member of the Board may resign his office by giving notice in writing to the ¹[State Government]; and, on such resignation being accepted, shall be deemed to have vacated his office.

Casual
vacancies.

14. When the place of an appointed or elected member of the Board is declared vacant under sub-section (4) of section 10 or becomes vacant by his removal, resignation or death, a new member shall be appointed or elected as the case may be in the manner provided in section 8, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred :

Provided that no act of the Board, or of its officers, shall be deemed to be invalid by reason only that the number of members of the Board at the time of the performance of such act was less than the number provided in section 8.

President
of meetings
of the
Board.

15. (1) The Commissioner, or in his absence a member elected by the members present at a meeting of the Board, shall preside at every meeting of the Board, and shall have a second or casting vote in all cases of equality of votes.

(2) The presence of at least three members shall be necessary to form a quorum at a meeting of the Board.

The Commissioner of Wakfs.

Appoint-
ment of the
Commis-
sioner.

16. The Commissioner of Wakfs shall be a person professing Islam, and shall be appointed by the ¹[State Government] by notification in the ²[Official Gazette]. He shall ordinarily be appointed for five years, and shall be eligible for re-appointment.

The Com-
missioner
to be a
whole-time
officer.

17. The Commissioner, during his term of office, shall not hold any other salaried post or the office of a mutwalli, and, subject to any exceptions permitted by the ¹[State Government], shall devote his whole time and attention to his duties under this Act.

Remune-
ration of
the Com-
missioner.
Leave of
absence or
deputation
of the Com-
missioner.

18. The Commissioner shall receive such monthly salary as may be fixed by the ¹[State Government].

19. (1) The ¹[State Government] may, after consultation with the Board, grant leave of absence to the Commissioner or depute him to other duties for such period as it thinks fit.

¹See foot-note 1 on page 676, *ante*.

²See foot-note 8 on page 676, *ante*.

of 1934.]

(Chapter II.—Constitution of Board and appointment of Commissioner.—Sections 20—25.)

(2) The allowance (if any) to be paid to the Commissioner while absent on leave or deputation shall be such amount as may be fixed by the ¹[State Government].

20. (1) Whenever the Commissioner is granted leave of absence or deputed to other duties, the ¹[State Government] may appoint a person to act as Commissioner.

Appointment, etc., of acting Commissioner.

(2) The salary of any person appointed to act as Commissioner shall be fixed by the ¹[State Government].

21. If at any time it appears to the ¹[State Government] that the Commissioner has shown himself to be unsuitable for his office, or has been guilty of misconduct or neglect which renders his removal expedient, it may, by notification in the ³[Official Gazette], declare that the Commissioner shall cease to hold such office.

Removal of the Commissioner.

22. The Commissioner shall be a corporation sole by the name of "the Commissioner of Wakfs" and shall have perpetual succession and an official seal and shall by the said name sue and be sued.

Commissioner to be a corporation sole.

Officers and Servants.

23. The Board, with the previous sanction of the ¹[State Government], may from time to time determine the number, designations and grades of the officers and servants (other than employees who are paid by the day) whom the Board considers it necessary to employ for the purposes of this Act and the amount and nature of the salary, fees and allowances to be paid to each such officer and servant.

Strength and remuneration of staff.

24. The power of appointing, promoting, and granting leave to officers and servants of the Board and reducing, suspending or dismissing them for misconduct, shall be vested in the Commissioner :

Powers of appointment, etc., vested in the Commissioner.

Provided that the Commissioner shall not appoint any person to a post the maximum monthly pay of which exceeds one hundred rupees except with the approval of the Board :

Provided further that any officer or servant in receipt of a monthly salary exceeding one hundred rupees who is reduced, suspended or dismissed by the Commissioner may appeal to the Board, whose decision shall be final.

Officer.

25. The office of the Commissioner and the Board shall be situated in Calcutta.

Office of the Commissioner and the Board.

¹ See foot note 1 on page 676, ante.

³ See foot-note 2 on page 676, ante.

(Chapter II.—Constitution of Board and appointment of Commissioner.—Section 26.—Chapter III.—Functions of the Commissioner and the Board.—Section 27.)

Travelling
allowance.

26. There shall be paid to the Commissioner, members, officers and servants of the Board allowances for attendance at meetings of the Board and for journeys undertaken in the discharge of their duties under this Act at such reasonable rates as may, from time to time, be allowed by the Board with the previous sanction of the ¹[State Government].

CHAPTER III.

FUNCTIONS OF THE COMMISSIONER AND THE BOARD.

General
powers and
duties.

27. Subject to the provisions of this Act and of the rules made by the ¹[State Government] thereunder—

(1) the functions of the Commissioner shall include—

- (a) investigating ²[and determining] the nature and extent of wakfs and wakf property, and calling from time to time for accounts, returns and information from mutwallis ;
- (b) ensuring that the income and other property of wakfs are applied to the objects and for the purposes and for the benefit of any class of persons for which such wakfs are created or intended ;
- (c) giving directions for the proper administration of wakfs ;
- (d) keeping in his custody the particulars and all other information relating to wakfs-al-al-aulad ;
- (e) generally, doing all such acts as may be necessary for the due control, maintenance and administration of wakfs ;

(2) the functions of the Board shall include—

- (i) in the absence of any directions by the wakif or any lawful authority, declaring what proportion of the income or other property of the wakf shall be allocated to any particular object of the wakf ;
- (ii) declaring in what manner any surplus income of a wakf shall be utilised ;
- (iii) constituting committees, where necessary, for the administration of wakfs ;
- (iv) exercising and performing such other powers and duties as are expressly conferred or imposed on the Board or under this Act ;
- (v) generally, advising the Commissioner in the exercise and the performance of his powers and duties under this Act.

¹See foot-note 1 on page 676, *ante*.

²These words were inserted by section 2 of the Bengal Wakf (Amendment) Act, 1935 (Ben. Act IV of 1935).

of 1934.]

(Chapter III.—Functions of the Commissioner and the Board.—Sections 28—32.)

28. The Commissioner and the Board in exercising their powers under this Act in respect of any wakf shall act in conformity with the directions of the wakif, the purposes of the wakf and any usage or custom of the wakf sanctioned by the Islamic law :

The Commissioner and the Board to carry out purchases of wakfs but may revise inoperative provisions.

Provided that in furtherance of the objects of the wakf or in the interest of the beneficiaries of the Board may revise any provision in the wakf deed which has become inoperative or impossible of execution owing to efflux of time or changed conditions.

29. The Board may, from time to time, authorize the Commissioner to exercise and perform, subject to the control of the Board, any of the powers and duties conferred or imposed on the Board by or under this Act.

Commissioner to perform certain functions authorized by the Board.

30. Subject to any rules made by the ¹[State Government] in this behalf, the Commissioner, with the approval of the Board, may exercise all or any of the powers conferred on him by this Act through the Commissioners of the Divisions or the Collectors of the districts in which the wakf property concerned is situated or through any other person whom he may appoint for such purpose and may from time to time delegate any of his powers to such Commissioners, Collectors or other persons as aforesaid and may at any time revoke such delegation.

Exercise of powers through Commissioners of Divisions and Collectors.

31. The Commissioner may at any time consult the Board in regard to any matter connected with the discharge of his functions under this Act.

Power of Commissioner to consult the Board.

32. In the case of a wakf-al-al-aulad, a beneficiary or any person entitled under the wakf deed to receive pecuniary or other material benefits either on his own account or on behalf of a religious or charitable institution, and in the case of any other wakf, any person interested may make an application to the Commissioner supported by an affidavit to institute an inquiry relating to the administration of a wakf or for the examination and audit of the accounts of a wakf, and the Commissioner, on receipt of such application and the prescribed fee, and on being satisfied from facts set forth in the affidavit that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, shall take such action thereon as he thinks fit :

Application for inquiry or audit of accounts.

Provided that an application for the examination and audit of accounts shall not be made in respect of accounts relating to a period more than three years prior to the date of such application.

¹See foot note 1 on page 676 ante.

[Ben. Act XIII]

(Chapter III.—Functions of the Commissioner and the Board.—Sections 33—37.)

Power to
summon
witnesses
and
compel the
production
of docu-
ments.

Protection
of wakfs-al-
al-aulad if
mismana.

Informa-
tion
required
by the
Board.

Bar to
requisition
of informa-
tion to
documents
from a
stranger to
the wakf.

Power of
mutwalli
to apply
for direc-
tions.

33. For the purposes of any inquiry under this Act the Commissioner or any person authorized by him in this behalf shall have the power to summon and enforce the attendance of witnesses including the parties interested and to compel the production of documents by the same means, and, so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

34. (1) If after an inquiry under section 32 the Commissioner is of opinion that the affairs of any wakf-al-al-aulad have been mismanaged to such an extent as to make it desirable for the protection of the wakf property or in the interest of the beneficiaries that the wakf should be subjected to greater control and supervision, he may recommend to the ¹[State Government] that such wakf shall for a specified period be subject to the provisions of this Act which are applicable to wakfs other than wakfs-al-al-aulad.

(2) After considering any recommendation of the Commissioner under sub-section (1), the ¹[State Government] may, if it thinks fit, by notification in the ²[Official Gazette], direct that for such period as may be specified therein the provisions of this Act which are applicable to wakfs other than wakfs-al-al-aulad shall so far as possible apply to the wakf to which the recommendation relates and thereupon, notwithstanding anything contained in this Act, these provisions shall apply accordingly.

35. The Commissioner shall be bound to comply, as far as possible, with any request made by the Board for the supply of any information or the production of any document relating to a wakf or for the summoning of any witness whose attendance may be required :

Provided that in the case of a wakf-al-al-aulad the information or document or the attendance of the witness is required for the due performance of any duty of the Board under this Act in relation to such wakf-al-al-aulad.

36. Notwithstanding anything contained in this Act the Commissioner shall have no power to require any information or documents in respect of a wakf from any stranger to the wakf.

37. (1) Any mutwalli may apply by petition to the Commissioner for the opinion, advice or direction of the Commissioner on any question affecting the management or administration of the wakf property and the Commissioner shall give his opinion, advice or direction, as the case may be, thereon :

Provided that the Commissioner, if he cannot suitably dispose of the question, may refer the mutwalli to the Court of the District

Act V
of 1908.

¹ See foot-note 1 on page 676, ante.

² See foot-note 3 on page 676, ante.

of 1934.]

(Chapter III.—Functions of the Commissioner and the Board.—Sections 38, 39.)

Judge having local jurisdiction over the place where the wakf property or any part thereof is situated or to any other Court empowered in this behalf by the ¹[State Government] and if the mutwalli thereafter applies by petition to such Court, the Court shall give its opinion, advice or direction in the manner provided in sub-sections (2) and (3).

(2) The Commissioner on receiving a petition under sub-section (1) may either give his opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the persons interested in the wakf, or to be published for information, in such manner as he thinks fit.

(3) On any date fixed under sub-section (2) or on any subsequent date to which the hearing may be adjourned the Commissioner, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.

(4) Every mutwalli acting upon or in accordance with the opinion, advice or direction given by the Commissioner or the Court, as the case may be, shall be deemed, so far as his own responsibility is concerned, to have discharged his duties as a mutwalli in the matter in respect of which the petition was made :

Provided that nothing herein contained shall indemnify any mutwalli for any act done in accordance with such opinion, advice or direction if such mutwalli has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction.

38. (1) For the purpose of making provision for the payment of rent and of revenue, cess, rates and taxes due to the Government or to any local authority, for the discharge of the expenses of repairs of the wakf property and for the preservation of the wakf property the Board may direct the creation and maintenance, in such manner as it may think fit, of a reserve fund from the income of a wakf other than a wakf-al-al-aulad.

Creation of reserve fund.

(2) The Commissioner may, for the purposes referred to in sub-section (1), at the request of the majority of the beneficiaries of a wakf-al-al-aulad, direct the creation and maintenance, in such manner as he may think fit, of a reserve fund from the income of such wakf.

39. (1) Where a mutwalli refuses to pay or does not pay any revenue, cess, rates and taxes due to the Government or any local authority, the Commissioner may discharge the dues from the Wakf Fund and then proceed to recover the same from the wakf property and may also recover damages at twelve and a half *per cent.* of the dues from the mutwalli.

Power to pay dues in case of default by mutwalli.

¹See foot-note 1 on page 676, *ante*.

(Chapter III.—Functions of the Commissioner and the Board.—Sections 40—43.)

(2) Any sum of money due under sub-section (1) shall be recoverable as a public demand.

Power to
appoint a
mutwalli
in certain
cases.

40. In the case of any wakf of which there is no mutwalli or where there appears to the Board to be an impediment to the appointment of a mutwalli the Board, subject to any order of a competent Court, may appoint for such period as it thinks fit a person to act as mutwalli.

Appoint-
ment of
official
mutwalli.

41. (1) The Board may appoint an official mutwalli.

(2) Any intending wakf may, with the permission of the Commissioner and subject to such conditions as to remuneration and other matters as the Commissioner may fix, appoint the official mutwalli as the mutwalli of his wakf, and the official mutwalli shall thereafter accept the office.

Inspection
of records
and grant
of copies.

42. (1) The Commissioner may grant inspection and copies of proceedings or other records of the Board or the Commissioner on payment of such fees as may be prescribed by the Board and subject to such conditions as he may determine. Copies shall be certified by the Commissioner, or by such officer as may be authorised in that behalf by the Commissioner, in the manner provided in section 76 of the Indian Evidence Act, 1872.

I of 1872.

(2) Any person interested in a wakf other than a wakf-al-al-aulad shall be entitled, with the permission of the Commissioner, to inspect and obtain copies of such proceedings or other records relating to the wakf.

(3) In the case of a wakf-al-al-aulad a beneficiary shall be entitled, with the permission of the Commissioner, to inspect and obtain copies of such proceedings or other records relating to the wakf.

(4) In the case of any other wakf, a stranger to the wakf shall be entitled, with the permission of the Commissioner, to inspect and obtain copies of such proceedings or other records relating to the wakf :

Provided that the Commissioner shall not grant such permission without consulting the mutwalli of the wakf.

Extension
of time for
perform-
ance of act.

43. The Commissioner may, from time to time, extend the time within which any act is required or ordered to be done by or under this Act :

Provided that the Board may, from time to time, extend the time for the doing of any act which is required or ordered to be done by the Board.

of 1934.]

(Chapter III.—Functions of the Commissioner and the Board.—
Section 43A.—Chapter IV.—Enrolment of wakfs.—Section 44.)

XVIII of
1879.

¹43A. (1) The provision of section 36 of the Legal Practitioners Act, 1879, shall, subject to the provisions of this section, be applicable, so far as may be, to the framing and publication of a list of touts, to the exclusion of touts included in the list from the precincts of the office of the Commissioner and to the arrest, detention, trial and punishment of such touts.

Application
of section
36 of Act
XVIII of
1879 to
touts in
Office of
the Com-
missioner.

(2) The Commissioner shall, for the purposes of the said section 36, be deemed to be a Civil Court and an authority referred to in sub-section (1) of that section.

(3) For the purposes of this section “tout” has the same meaning as in section 3 of the Legal Practitioners Act, 1879.

CHAPTER IV.

ENROLMENT OF WAKFS.

44. (1) All wakfs existing at or created after the commencement of this Act shall be enrolled at the office of the Commissioner.

Enrolment
of wakfs.

(2) Application for enrolment shall be made by the mutwalli :
Provided that any person interested may apply for such enrolment.

(3) An application for enrolment shall be made in such form and manner and at such place as the Commissioner may prescribe and shall contain the following particulars so far as possible :—

- (a) a description of the wakf properties sufficient for the identification thereof ;
- (b) the gross annual income from such properties ;
- (c) the amount of the Government revenue and cesses, and of all rents and taxes annually payable in respect of the wakf properties ;
- (d) an estimate of expenses annually incurred in the realisation of the income of the wakf properties based on such details as are available ;
- (e) the amount set apart under the wakf for—
 - (i) the salary of the mutwalli and allowances to individuals ;
 - (ii) purely religious purposes ;
 - (iii) charitable purposes ; and
 - (iv) any other purposes ;
- (f) any other particulars prescribed by the Commissioner.

¹Section 43A was inserted by section 16 of the Bengal Touts Act, 1942 (Ben. Act V of 1942).

(Chapter IV.—Enrolment of wakfs.—Section 45.)

(4) Every such application shall be accompanied by a copy of the wakf deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakf.

(5) On receipt of an application for enrolment, the Commissioner may before enrolling the wakf make such inquiries as he thinks fit in respect of the genuineness and validity of the application and the correctness of any particulars therein and when the application is made by any person other than the person administering the wakf property the Commissioner shall, before enrolling the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

(6) In the case of wakfs created before the date on which this section comes into force application for enrolment shall be made within six months from that date and in the case of wakfs created after that date within six months from the date of the creation of the wakf :

Provided that in the case of a testamentary wakf application for enrolment shall be made within six months from the date on which this section comes into force or from the date of the death of the testator, whichever event happens last.

(7) Every application made under sub-section (2) shall be written in the English or Bengali language, and shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908, for the signing and verification of pleadings.

Act V of
1908.

If the applicant omits or refuses on notice to sign or verify the application, a note to that effect shall be made in the register maintained under section 45.

Register of
wakfs.

45. The Commissioner shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds and the following particulars :—

- (a) the class of the wakf ;
- (b) the name of the mutwalli ;
- (c) the rule of succession to the office of mutwalli under the wakf deed or by custom and usage ;
- (d) particulars of all wakf properties and all title deeds and documents relating thereto ;
- (e) particulars of the scheme of administration and the scale of expenditure at the time of enrolment ; and
- (f) such other particulars as the Commissioner may prescribe.

of 1934.]

(Chapter IV.—Enrolment of wakfs.—Sections 46—47.—
Chapter V.—Wakf Accounts.—Section 48.)

46. The Commissioner on his own motion or on the petition of any person interested verified in the manner referred to in sub-section (7) of section 44 may direct a mutwalli to apply for the enrolment of a wakf or to supply any information regarding a wakf or may himself collect such information and may cause any wakf to be enrolled or may at any time amend the register of wakfs.

Power to cause enrolment of wakf and to amend register.

¹46A. Any question whether a particular property is wakf property or not or whether a wakf is wakf-al-al-aulad or not shall be decided by the Commissioner whose decision, unless revoked or modified by a competent Court, shall be final, and any decision of any such question made before or after the commencement of the Bengal Wakf (Amendment) Act, 1935, by a person appointed by the ²[State Government] under sub-section (1) of section 2 of this Act shall be deemed to have been made by the Commissioner under this section.

Decision if a property is wakf property or a wakf is wakf-al-aulad.

Ben. Act
VI of 1936.

47. (1) In the case of any change in the management of an enrolled wakf due to the death or retirement or removal of the mutwalli, the incoming mutwalli shall forthwith, and any other person may, notify the change to the Commissioner.

Notification of changes in enrolled wakfs.

(2) In the case of any other change in any of the particulars mentioned in section 44, the mutwalli shall within six months from the occurrence of the change notify such change to the Commissioner.

CHAPTER V.

WAKF ACCOUNTS.

48. (a) Before the fifteenth day of July next following the date on which the application referred to in section 44 has been made and thereafter before the fifteenth day of July in every year, every mutwalli of a wakf other than a wakf-al-al-aulad shall prepare and furnish to the Commissioner a full and true statement of accounts, in such form and language and containing such particulars as may be prescribed by the Board of all monies received or expended by the mutwalli on behalf of the wakf during the period of twelve months ending on the thirty-first day of March or on the last day of the Bengali year, or, as the case may be, during that portion of the said period during which the provisions of this Act have been applicable to the wakf.

Submission of accounts of wakfs.

(b) Such statement shall also contain the following particulars—

(i) any change which may have taken place since the application for enrolment or since the submission of the last annual statement, as the case may be, in the extent, nature or quality of the wakf properties, including any transfer or transaction affecting such properties ;

¹Section 46A was inserted by section 8 of the Bengal Wakf (Amendment) Act, 1935 (Ben. Act IV of 1936).

²See foot-note 1 on page 616, ante.

[Ben. Act XIII

(Chapter V.—Wakf accounts.—Sections 49—51.)

(ii) the amount of liabilities, if any, of the wakf on account of outgoings such as rent, revenue, cesses, rates, taxes, salaries, and allowances, and on account of all other matters ;

(iii) any other particulars which the Board may require.

Audit of
account of
wakfs.

49. (1) The accounts of wakfs submitted to the Commissioner under section 48 shall be audited and examined annually or at such other intervals as the Board may determine by an auditor appointed by the Board.

(2) The auditor may, by written notice, require the production before him of any document, or require the attendance before him of any person responsible for the preparation of the account, to enable the auditor to obtain such information as he may consider necessary for the proper conduct of his audit.

(3) After completing the audit, the auditor shall submit a report to the Commissioner :

Provided that the auditor may submit an *interim* report at any time if he thinks fit.

(4) The report of the auditor shall among other things specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report. The report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(5) The cost of the audit of the accounts of a wakf shall be paid from the Wakf Fund.

Commis-
sioner
to pass
orders on
auditor's
report.

50. The Commissioner shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders on the report as he thinks fit.

Sums certi-
fied due
recoverable
as public
demands.

51. (1) Every sum certified to be due from any person by an auditor in his report under section 49 unless such certificate is modified or cancelled by the Commissioner by an order made under section 50, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Commissioner.

(2) If such payment is not made in accordance with the provisions of sub-section (1) the sum payable shall be recoverable as a public demand,

of 1934.]

(Chapter VI.—*Statements of Wakfs-al-al-aulad.*—Section 52.—
Chapter VII.—*Transfer of wakf property.*—Section 53.)

CHAPTER VI.

STATEMENTS OF WAKFS-AL-AL-AULAD.

52. (1) Before the 15th day of July next following the day on which the application referred to under section 44 has been made and thereafter before the 15th day of July every year, every mutwalli of a wakf-al-al-aulad shall prepare and furnish to the Commissioner a true statement in respect of the period of twelve months ending on the thirty-first day of March or on the last day of the Bengali year, or, as the case may be, in respect of that portion of the said period during which the provisions of this Act have been applicable to the wakf, containing the following particulars :—

Statements
of wakfs-al-
al-aulad.

- (i) the gross income from the wakf properties ;
- (ii) the amount of the Government revenue and cesses and of all rents and taxes paid in respect of the wakf properties ;
- (iii) the expenses incurred in the realization of the income of the wakf properties ;
- (iv) the amount paid under the wakf for—
 - (a) the salary of the mutwalli and allowances to individuals ;
 - (b) purely religious purposes ;
 - (c) charitable purposes ; and
 - (d) any other purposes.

(2) If the Commissioner has reason to doubt the accuracy of the statement submitted under sub-section (1) he may after examining the statement call for the explanation of any person in regard to such statement and shall pass such orders on such statement as he thinks fit.

CHAPTER VII.

TRANSFER OF WAKF PROPERTY.

53. (1) Except as provided in sub-sections (2), (3) and (4) no transfer by a mutwalli of any immovable property of a wakf by way of sale, gift, mortgage or exchange or by way of lease for a term exceeding five years shall be valid without the previous sanction of the Commissioner.

Bar to
transfer
of immov-
able prop-
erty of a
wakf.

(2) Where such transfer is made under an express power conferred by the wakf deed the previous sanction of the Commissioner shall not be necessary, but a notice of the proposed transfer in such form and containing such particulars as may be prescribed by the Board shall be sent by the mutwalli to the Commissioner one month before the transfer is made.

[Ben. Act XIII]

(Chapter VII.—Transfer of wakf property.—Section 54.—Chapter VIII.—Mutwallis.—Sections 55—57.)

(3) Nothing in sub-section (1) shall apply to any such transfer made for the preservation of the wakf property if a certificate is obtained from the Commissioner within six months from the date of the transfer that such transfer was proper and necessary.

(4) Nothing in this section shall apply to any lease of land by a mutwalli for the purpose of cultivation by the lessee or by members of his family or by servants or labourers or with the aid of partners.

Power to Commissioner to grant sanction to, and certificate of, transfer.

54. A mutwalli may apply to the Commissioner for sanction to transfer under sub-section (1) of section 53 or for a certificate to transfer under sub-section (3) of that section, and the Commissioner after making such inquiry and giving notice to such persons in such manner as he thinks fit and hearing them if they desire to be heard may accord sanction to such transfer on such terms and conditions as he may in his discretion impose or may grant the necessary certificate, as the case may be.

CHAPTER VIII.

MUTWALLIS.

Mutwalli to convert property and invest money in certain

55. Every mutwalli, unless there is anything to the contrary in the wakf deed, shall invest in such manner as may be approved by the Board any of the wakf property which consists of money which cannot be applied immediately or at an early date to the purposes of the wakf and shall, with the sanction of the Board, convert any of the wakf property which is of a wasting nature and invest the proceeds in such manner as may be approved by the Board.

Mutwalli entitled to pay certain costs from Wakf Fund.

56. Notwithstanding anything contained in the wakf deed every mutwalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 44 or any accounts under section 48 or any statements under section 52 or any information or documents required by the Commissioner or a person authorised by the Commissioner.

Penalties.

57. (1) If a mutwalli fails—

- (a) to apply for enrolment ;
- (b) to furnish statements of particulars or of accounts, or returns as required by this Act ;
- (c) to supply information or particulars as required by the Board or the Commissioner or a person authorised by the Board or the Commissioner ;

of 1934.]

(Chapter VIII.—Mutwallis.—Section 58.—Chapter IX.—
Finance.—Section 59.)

- (d) to allow inspection of wakf properties, accounts, or records, or deeds and documents relating thereto, or assist inquiries and investigations, if called upon to do so by the Board or the Commissioner or a person authorized by the Board or the Commissioner ;
- (e) to deliver possession of any wakf property if ordered by the Board or the Court ;
- (f) to carry out the directions of the Board or the Commissioner or a person authorized by the Board or the Commissioner ;
- (g) to pay the contribution payable under section 59 ;
- (h) to discharge any public dues, or
- (i) to do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the Court that there was reasonable cause for his failure, be punishable with fine which may extend to five hundred rupees.

(2) If a mutwalli furnishes any statement, return or information referred to in clause (b) or clause (c) of sub-section (1) which he knows or has reason to believe to be false, misleading or untrue in any material particular he shall be punishable with fine which may extend to five hundred rupees.

58. Notwithstanding anything contained in any other law a mutwalli may be liable to removal by a suit under sub-section (1) of section 73 on the ground that he has been fined more than once under section 57.

Removal
of
mutwalli.

CHAPTER IX.

FINANCE.

59. (1) The mutwalli of every wakf shall pay annually to the Board such contribution not exceeding the rate of five *per centum* of the net available income of the wakf as the Board may, with the sanction of the ¹[State Government], from time to time, determine :

Annual
contribu-
tions
payable to
the Board.

Provided that in the case of a wakf-al-al-aulad the contribution shall be at such rate (not exceeding one-half of the rate payable by other wakfs) of the net available income of the wakf as the Board may, with the sanction of the ¹[State Government], from time to time, determine.

(2) The Board may in the case of any particular wakf and in the interest thereof reduce or remit such contribution, with the sanction of the ¹[State Government], for such time as it thinks fit.

¹See foot-note 1 on page 676, *ante*.

[Ben. Act XIII

(Chapter IX.—Finance.—Sections 60, 61.)

(3) Subject to any provisions in the wakf deed the mutwalli may realize the contributions payable by him under sub-section (1) from the various persons entitled to receive any pecuniary or other material benefits from the wakf, but the sum realizable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion as the value of benefits receivable by such person bears to the entire net available income of the wakf :

Provided that, if there is any income of the wakf available in excess of the amount payable as dues under this Act, other than as the contribution, and in excess of the amount payable under the wakf deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of wakf shall, subject to the prior payment of any dues to ¹[the Government], and of any other statutory first charge on the wakf property or the income thereof, be a first charge on the income of the wakf and shall be recoverable as a public demand.

(5) If a mutwalli realizes the income of the wakf and refuses to pay or does not pay such contribution he shall also be personally liable for such contribution which may be realized from his person or property in the manner aforesaid.

Com-
missioner
may
borrow
money.

60. (1) The Commissioner, with the approval of the Board and the previous sanction of ²[State Government] may, for the purpose of giving effect to the provisions of this Act, borrow such sum of money and on such terms and conditions as the ²[State Government] may fix and the Commissioner shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

(2) Neither the Board nor, except as provided in sub-section (1), the Commissioner shall borrow money upon the security of the Wakf Fund.

Wakf
Fund.

61. (1) All monies received by the Board or the Commissioner for the purposes of this Act and all other monies realised under this Act shall form a fund to be called the "Wakf Fund".

(1) The ²[State Government] may make rules regulating the payment of monies into the Wakf Fund, the investment by the Board of monies received into that fund and the custody and disbursement of such monies.

(2) The Wakf Fund shall, subject to the provisions of sub-section (2), be under the control of the Board.

¹The words "the Crown" were originally substituted for the words "the Government" by para. 8 and Schedule IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²See foot-note 1 on page 676, *ante*.

of 1934.]

(Chapter IX.—Finance.—Sections 62—64.)

62. (1) The Wakf Fund shall be applied to—

- (a) payment to the ¹[State Government] of cost of survey of wakf properties under section 2 ;
- (b) repayment of any loan incurred under section 60 and payment of the interest thereon ;
- (c) payment of the cost of audit of the Wakf Fund ;
- (d) payment of the salary and allowances of the Commissioner and or any person appointed under section 20 to act as Commissioner ;
- (e) payment of travelling allowances to the Commissioner, members, officers and servants of the Board under section 26 ;
- (f) payment of the cost of the establishment employed by the Board ; and
- (g) payment of all expenses incurred by the Commissioner and the Board in the performance of the duties imposed, and the exercise of the powers conferred, by this Act.

(2) If any balance remains after meeting the expenditure referred to in sub-section (1), the Board may use any portion of such balance for the preservation and protection of wakf property.

63. The Board shall keep such accounts of the receipts and disbursements of the Wakf Fund as the ¹[State Government] may prescribe and shall submit the same for examination from time to time by auditors.

Accounts
of Wakf
Fund.

64. (1) The accounts of the Wakf Fund shall be audited and examined annually by such auditor as may be appointed by the ¹[State Government].

Audit of
accounts
of Wakf
Fund.

(2) The auditor may, by written notice, require the production before him of any document, or require the attendance before him of any person responsible for the preparation of the account, to enable the auditor to obtain such information as he may consider necessary for the proper conduct of his audit.

(3) After completing the audit, the auditor shall submit a report to the ¹[State Government] :

Provided that the auditor may submit an *interim* report at any time if he thinks fit.

(4) The report of the auditor shall among other things specify all cases of irregular, illegal or improper expenditure or of failure to recover monies or other property due or of loss or

¹See foot-note 1 on page 676, *ante*.

[Ben. Act XIII]

(Chapter IX.—Finance.—Sections 65, 66.—Chapter X.—Judicial proceedings.—Sections 67—69.)

waste of money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report. The report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(5) The cost of audit shall be paid from the Wakf Fund.

State Government to pass orders on auditor's report.

65. The ¹[State Government] shall examine the auditor's report and may call for the explanation of any person in regard to any matter therein, and shall pass such orders on the report as it thinks fit.

Sums certified due recoverable as public demands.

66. (1) Every sum certified to be due from any person by an auditor in his report under section 64 unless such certificate is modified or cancelled by the ¹[State Government] by an order made under section 65 and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the ¹[State Government].

(2) If such payment is not made in accordance with the provisions of sub-section (1) the sum payable shall be recoverable as a public demand.

CHAPTER X.

JUDICIAL PROCEEDINGS.

Procedure for trial of certain wakf cases.

67. Notwithstanding anything contained in the Code of Civil Procedure, 1908, the ¹[State Government] may make rules for the procedure to be followed in all suits or proceedings relating to any wakf or to any wakf property and not involving any claim by or against a stranger to the wakf.

Act V of 1908.

Deposit of decretal amount in Court in certain wakf

68. Where a decree for rent or any other relief claimed under or on behalf of a wakf is passed or such decree is executed by any Court the decretal amount, if any, shall, unless an application for enrolment of the wakf has been made under section 44, or the wakf has been exempted from enrolment under section 4, be paid into the Court passing or executing the decree, as the case may be, and shall be kept in deposit by the Court until an application for enrolment of the wakf has been made under section 44 or the wakf has been exempted from enrolment under section 4.

Bar to compromise of suit or proceeding without sanction of Court.

69. No suit or proceeding by or against a mutwalli as such in any Court shall be compromised without the sanction of the trying Court.

¹See foot-note 1 on page 676, ante.

of 1934.]

(Chapter X.—Judicial proceedings.—Sections 70—73.)

70. (1) In every suit or proceeding in respect of any wakf property or of a mutwalli as such except a suit or proceeding for the recovery of rent by or on behalf of the mutwalli the Court shall issue notice to the Commissioner at the cost of the party instituting such suit or proceeding.

Notice of suits, etc., to be given to the Commissioner.

(2) Before any wakf property is notified for sale in execution of a decree, notice shall be given by the Court to the Commissioner.

(3) Before any wakf property is notified for sale for the recovery of any revenue, cess, rates or taxes due to ¹[the Government] or to local authority notice shall be given to the Commissioner by the Court, Collector or other person under whose order the sale is notified.

(4) In the absence of a notice under sub-section (1) any decree or order passed in the suit or proceeding shall be declared void, if the Commissioner, within one month of his coming to know of such suit or proceeding, applies to the Court in this behalf.

(5) In the absence of a notice under sub-section (2) or sub-section (3) the sale shall be declared void, if the Commissioner, within one month of his coming to know of the sale, applies in this behalf to the Court, or other authority under whose order the sale was held.

71. In any suit or proceeding in respect of a wakf or any wakf property by or against a stranger to the wakf or any other person the Commissioner may intervene and shall on his application be added as a party, and shall be entitled to conduct or defend such suit or proceeding on behalf of and in the interest of the wakf.

Commissioner may be made a party to a suit or proceeding regarding a wakf on his application.

72. If there is no mutwalli or the mutwalli refuses or neglects to act in the matter within a reasonable time, the Commissioner may in his own name institute a suit or proceeding in Court against a stranger to the wakf or any other person for the recovery of any wakf property wrongfully possessed, alienated or leased, to have any wakf property discharged of an encumbrance or obligation wrongfully created or to recover any money belonging to a wakf.

Commissioner may institute suit or proceeding regarding a wakf in certain cases.

73. (1) A suit to obtain any of the reliefs mentioned in section 14 of the Religious Endowments Act, 1863, and in section 92 of the Code of Civil Procedure, 1908, relating to any wakf may, notwithstanding anything to the contrary contained in those Acts, be instituted by the Commissioner without obtaining the leave or consent referred to in those Acts.

Institution of suits under section 14 of the Religious Endowments Act, 1863 and section 92 of the Code of Civil Procedure, 1908.

XX of
1863.
Act V of
1908.

¹See foot-note 1 on page 694, ante.

[Ben. Act XIII

(Chapter X.—Judicial proceedings.—Sections 74, 75:—Chapter XI.—Amendments and repeal.—Sections 76, 77.)

(2) No suit to obtain any of the reliefs referred to in sub-section (1) relating to a wakf shall be instituted by any person or authority other than the Commissioner without the consent in writing of the Commissioner.

Proceedings under the Land Acquisition Act, 1894.

74. (1) If, in the course of proceedings under the Land Acquisition Act, 1894, it appears to the Collector before an award is made that any property under acquisition is wakf property a notice of such acquisition shall be served by the Collector on the Commissioner and further proceedings shall be stayed to enable the Commissioner to appear and plead as a party to the proceedings at any time within three months from the date of the receipt of such notice.

I of 1894.

(2) Where the Commissioner has reason to believe that any property under acquisition is wakf property he may at any time before an award is made appear and plead as a party to the proceedings.

(3) When the Commissioner has appeared under the provisions of sub-section (1) or sub-section (2) no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894, without giving an opportunity to the Commissioner to be heard.

Costs in suits or proceedings.

75. All costs and expenses incurred by the Commissioner in connection with any suit or proceeding in respect of any wakf or wakf property to which the Commissioner is a party and all costs decreed against the Commissioner by the Court shall be payable out of the funds of such wakf :

Provided that the Commissioner may, if he thinks fit, meet such costs and expenses from the Wakf Fund and thereafter recover the same from the funds of the wakf concerned.

CHAPTER XI.

AMENDMENTS AND REPEAL.

76. [Insertion of new section 16A in Regulation XIX of 1810.]—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

Amendment of section 22 of Act XX of 1863.

77. To section 22 of the Religious Endowments Act, 1863, the following proviso shall be added, namely :—

XX of 1863.

“Provided that this section shall not, so far as it is inconsistent with the provisions of the Bengal Wakf Act, 1934, apply to any wakf property in ¹[West Bengal]”.

¹See foot-note 2 on page 675, ante,

of 1934.]

(Chapter XI.—Amendments and repeal.—Sections 78—83.)

78. After section 23 of the Religious Endowments Act, 1863, the following section shall be inserted, namely :—

Insertion of new section 23A in Act XX of 1863.

Powers of Civil Court to be exercised by the Board of Wakfs in ¹[West Bengal].

“23A. Notwithstanding anything contained in this Act, the powers of the Civil Court under sections 5 and 10 shall be exercised in respect of any wakf property in ¹[West Bengal] by the Board of Wakfs appointed under the Bengal Wakf Act, 1934.”

VI of 1890.

79. To section 5 of the Charitable Endowments Act, 1890, the following proviso shall be added, namely :—

Amendment of section 5 of Act VI of 1890.

“Provided that the powers of the ²[State Government] under this section for the settlement, modification or substitution of a scheme for the administration of any property shall, in respect of any wakf property in ¹[West Bengal], be exercised, subject to the approval of the ²[State Government] by the Board of Wakfs appointed under the Bengal Wakf Act, 1934.”

80. After section 6 of the Charitable Endowments Act, 1890, the following sub-section shall be added, namely :—

Amendment of section 6 of Act VI of 1890.

“(3) An application for the vesting of any property of the nature specified in sub-section (3) of section 4 may, notwithstanding anything contained in this section, be made by the Commissioner of Wakfs appointed under the Bengal Wakf Act, 1934, where such property is under the administration of an official mutwalli or of a mutwalli appointed under section 40 of that Act.”

XIV of 1920.

81. After section 12 of the Charitable and Religious Trusts Act, 1920, the following section shall be added, namely :—

Insertion of new section 13 in Act XIV of 1920.

This Act not to apply to wakf property in ¹[West Bengal].

“13. the provisions of this Act shall not, so far as they are inconsistent with the provisions of the Bengal Wakf Act, 1934, apply to any wakf property

in ¹[West Bengal].”

82. [Repeal of Act XLII of 1923.]—Rep. by sec. 3 and the Second Sch. of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946).

Savings.

83. Nothing in this Act or in any repeal effected thereby shall affect—

- (a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act ; or
- (b) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability ; or
- (c) anything done or suffered before the commencement of this Act ; or
- (d) any enactment relating to wakfs or their administration which is not expressly repealed by this Act ; or
- (e) any law not inconsistent with this Act.

¹See foot-note 2 on page 676, ante.

²See foot-note 1 on page 676, ante.

(Chapter XII.—Rules and by-laws.—Sections 84, 85.)

CHAPTER XII.

RULES AND BY-LAWS.

Rules.

84. (1) The ¹[State Government] may make rules² for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the exemption of wakfs under section 4 ;
- (b) the manner in which the net available income of a wakf shall be determined ;
- (c) the delegation of powers by the Commissioner to Commissioners of Divisions, to Collectors and to other persons ;
- (d) the budgets, reports, accounts, returns or other information to be submitted by the Board and the Commissioner ;
- (e) the appointment and remuneration of auditors for auditing the accounts of the Wakf Fund ;
- (f) the manner in which the accounts of the Wakf Fund shall be kept, audited and published and the form and contents of the auditor's report ;
- (g) the payment of monies into the Wakf Fund, the investment, custody and disbursement of such monies ;
- (h) the method of elections of members under clause (b) of sub-section (1) and clauses (b) and (c) of sub-section (2) of section 8 ;
- (i) the regulation of functions of the Board and the Commissioner referred to in section 27 ;
- (j) the fees payable under section 32 ;
- (k) the procedure in suits and proceedings referred to in section 67 ; and
- (l) the service of notices and requisition under section 89.

(3) All rules made under this section shall be published in the ³[Official Gazette].

By-laws.

85. (1) The Board may, with the previous sanction of the ¹[State Government], from time to time, make by-laws as to—

- (a) the time and place of meetings ;

¹See foot-note 1 on page 676, *ante*.

²(a) For Rules for the purpose of carrying out the purposes of the Act, see notification No. 2727 Mis., dated 28.11.36, published in the *Calcutta Gazette* of 1936, Part I, page 2690.

(b) For the Bengal Wakf Fund Account Rules, see notification No. 2926 Mis., dated 28.8.38, published in the *Calcutta Gazette* of 1938, Part I, page 2865, as amended by subsequent notifications.

³See foot-note 3 on page 676, *ante*.

of 1934.]

(Chapter XIII.—Miscellaneous.—Section 86.)

- (b) the business to be transacted at meetings ;
 - (c) the period of notice of meetings and the manner in which such notice shall be given ;
 - (d) the procedure and conduct of business at meetings ;
 - (e) the method of ascertaining the opinion of the Board on any matter without convening a meeting ;
 - (f) the books to be kept at the office of the Board ;
 - (g) the manner in which the accounts of wakfs shall be kept and audited, the time and place of audit of accounts of wakfs and the form and contents of the auditor's report ;
 - (h) the fees for inspection of proceedings and records of the Board and for copies of the same under section 42 ;
 - (i) the form of application for enrolment, the further particulars to be contained therein, and the manner and place of enrolment of wakfs under section 44 ;
 - (j) the further particulars to be contained in the register of wakfs maintained under section 45 ;
 - (k) the form of and the further particulars to be contained in a statement of accounts under section 48 ;
 - (l) the form of and particulars to be contained in notices of proposed transfer of immovable property of a wakf under sub-section (2) of section 53.
- (2) All by-laws made under this section shall be published in the ¹[Official Gazette].

CHAPTER XIII.

MISCELLANEOUS.

86. (1) Any sum of money payable by a mutwalli from the funds of a wakf to the Board or to the Commissioner under this Act including any damages chargeable thereon and costs, if any, incurred shall be recoverable, subject to such rules as may be prescribed by the ²[State Government], as a public demand.

(2) The Commissioner shall forward to the Collector a requisition in the form prescribed under the Bengal Public Demands Recovery Act, 1913, under his signature specifying the sum recoverable under this Act as a public demand, and the Collector, on receipt of such requisition, shall proceed to recover the sum under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
III of
1913.

¹See foot-note 8 on page 676, *ante*.

²See foot-note 1 on page 676, *ante*.

[Ben. Act XIII of 1934.]

(Chapter XIII.—Miscellaneous.—Sections 87—93.)

Commissioner and officers and servants to maintain secrecy about particulars of wakfs.

87. Subject to the provisions of this Act the Commissioner and every officer and servant of the Board shall maintain secrecy about the particulars and all other information relating to a wakf which comes into his possession in his capacity as Commissioner or as an officer or servant of the Board.

The Commissioner, auditor, etc., to be deemed public servants.

88. The Commissioner, every auditor and every officer and servant of the Board authorized by the Commissioner or by the Board to do any act by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV of 1850.

Service of notice or requisition.

89. A notice or requisition under this Act may be served on the person named in the notice or requisition either by post or as a summons issued by a Court under the Code of Civil Procedure, 1908, or in such manner as the ¹[State Government] may prescribe.

Act V of 1908.

Attendance before the Board or the Commissioner may be either in person or by an agent.

90. Any mutwalli or other person who is entitled to attend before the Board or the Commissioner, in connection with any proceedings under this Act, may with the permission of the Board or the Commissioner, as the case may be, attend either in person or through any person authorized by him in writing in that behalf.

Trial of offences.

91. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Indemnity.

92. No suit shall be brought in any Civil or Revenue Court to set aside or modify any order made under this Act and no suit, prosecution or legal proceeding shall lie against the Board or the Commissioner or any other person appointed under this Act for anything which is in good faith done or intended to be done under this Act.

Powers to State Government to remove unforeseen difficulties.

93. If any difficulty arises as to the first constitution of the Board after the commencement of this Act or otherwise in first giving effect to the provisions of the Act, the ¹[State Government], as occasion may require, may, notwithstanding anything contained elsewhere in this Act, within ²[two years] from the date on which this Act in whole or in part first comes into force by order do anything which appears to it to be necessary for the purpose of removing the difficulty.

¹See foot-note 1 on page 676, *ante*.

²These words were substituted for the words "twelve months" by section 4 of the Bengal Wakf (Amendment) Act, 1935 (Ben. Act IV of 1935).

Bengal Act IV of 1935

(THE BENGAL WORKMEN'S PROTECTION ACT, 1935).¹

AMENDED	...	...	{ Ben. Act VI of 1940. West Ben. Act VII of 1948.
ADAPTED	...	...	{ (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950.

(21st March, 1935.)

An Act to prevent recovery of debts from certain classes of workmen by besetting ²[the places where they work or receive their wages].

WHEREAS it is expedient to prevent recovery of debts from certain classes of workmen by besetting ³[the places where they work or receive their wages];

5 & 6 Geo.
V, c. 61;
6 & 7 Geo.
V, c. 87;
9 & 10 Geo.
V, c. 101.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Workmen's Protection Act, ⁴[1935].

Short title
and local
extent.

(2) It shall apply in the first instance only to Calcutta and the districts of 24 Parganas, Hooghly and Howrah.

Ben. Act
IV of 1866.
Ben. Act
II of 1866.
XV of
1908.

Explanation.—"Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, and the port of Calcutta as defined by notification under section 5 of the Indian Ports Act, 1908.

2. The ⁴[State Government] may, by notification in the ⁵[*Official Gazette*], extend this Act to any area specified in the notification.

Further
provision
as to
extent.

¹For Statement of Objects and Reasons of the Bill, see the *Calcutta Gazette* of 1934, Pt. IV, page 165; for Report of the Select Committee, see the *Calcutta Gazette*, dated the 20th December, 1934, Pt. IV, page 189; and for proceedings in the Bengal Legislative Council, see the Bengal Legislative Council Proceedings, Vol. XLIV, No. 1, pages 57 and 243.

²These words were substituted for the words "their place of work" by sec. 2 of the Bengal Workmen's Protection (Amendment) Act, 1940 (Ben. Act VI of 1940).

³These figures were substituted for the figures "1934" by sec. 2 and the First Sch. of the West Bengal Repealing and Amending Act, 1948 (West Ben. Act VII of 1948).

⁴The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁵These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Besetting
certain
places with
a view to
recover
debt.

3. (1) Whoever loiters at or near any place where a workman works or receives his wages in a manner or in circumstances indicating that he is so loitering with a view to recover any debt from such workman shall be punished with imprisonment which may extend to six months or with a fine which may extend to two hundred and fifty rupees or with both.

(2) In this section the expression "workman" means a person employed by way of manual labour—

- (a) by a local authority or in a public utility service, or
- (b) in any mine, or
- (c) at any dock, wharf or jetty, or
- (d) in any railway station or yard, or
- (e) in any premises where any manufacturing process, as defined in the Factories Act, 1934, is carried on,

XXV of
1934.

and includes a seaman, as defined in the Workmen's Compensation Act, 1923.

VIII of
1923.

Explanation.—The expression "public utility service" in this section means—

- (a) any railway service ; or
- (b) any water transport service ; or
- (c) any tramway or motor service ; or
- (d) any postal, telegraph or telephone service ; or
- (e) any system of public conservancy or sanitation ; or
- (f) any industry, business or undertaking which supplies power, light or water to the public, or which the [State] Government may, by notification in the *Official Gazette*, declare to be a public utility service for the purposes of this Act.

Offences
under this
Act to be
cognizable
and
bailable.

4. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any offence punishable under this Act shall be cognizable and bailable.

Act V of
1898.

Offences
under this
Act triable
by
Presidency
Magistrate
or Magis-
trate of
first class.

5. No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

*The Proviso to sec. 2 was omitted by para. 8 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

*This section 3 was substituted for the original section 3 by sec. 8 of the Bengal Workmen's Protection (Amendment) Act, 1940 (Ben. Act VI of 1940).

*This word was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

Bengal Act X of 1935

THE BENGAL ELECTRICITY DUTY ACT, 1935.¹

REPEALED IN PART AND AMENDED

Ben. Act IV of 1938.
Ben. Act II of 1945.
Ben. Act XVI of 1946.
West Ben. Act XII of 1949.
West Ben. Act LXI of 1950.
West Ben. Act XXX of 1953.
West Ben. Act XXI of 1957.
West Ben. Act XVI of 1963.

ADAPTED

The Government of India (Adaptation of Indian Laws) Order, 1937.
The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
The Adaptation of Laws Order, 1950.

[30th May, 1935.]

*An Act to levy a duty on electrical energy consumed ** * * in Bengal.*

WHEREAS it is expedient to levy a duty on electrical energy consumed ** * * in Bengal ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Electricity Duty Act, 1935.

(2) It extends to the whole of ^a[West Bengal].

Short title,
extent
and com-
mence-
ment.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, dated the 28th January, 1935, page 8 ; and for report of the Select Committee, see the *Calcutta Gazette*, dated the 21st March, 1935, Part IV, page 97 ; and for Proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLV, No. 1, page 77 and *ibid* No. 3, page 17.

^aThe words "for lights and fans" were omitted by sec. 2 of the Bengal Electricity Duty (Amendment) Act, 1957 (West Ben. Act XXI of 1957).

^bThe words "West Bengal" were substituted for the word "Bengal" by paragraph (2) of Article 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

[Ben. Act X

(Sections 2, 3.)

(3) It shall come into force on such date¹ as the ²[State Government] may by notification in the ³[Official Gazette], appoint ** * *

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “consumer” means any person, other than a distributing licensee, who is supplied with energy by a licensee ⁴[or by the State Government] ;

(2) “energy” means electrical energy ;

(3) “licensee” means any person licensed under Part II of the Indian Electricity Act, 1910, to supply energy and includes any person who has obtained the sanction of the ⁵[State Government] under section 28 of that Act ⁶[and also includes the West Bengal Electricity Board to be constituted under section 5 of the Electricity (Supply) Act, 1948] ; and

(4) “prescribed” means prescribed by rules made under this Act.

LIV of
1948.Duty on
units of
energy
consumed.

⁷3. (1) Subject to the provisions of sub-sections (2) and (3), there shall be charged, levied and paid to the State Government a duty (hereinafter referred to as ‘electricity duty’), on the units of energy consumed at the rates specified in the First Schedule.

¹This Act came into force on the 1st July, 1935, *vide* notification No. 5151Com., dated the 1st June, 1935, published in the *Calcutta Gazette*, dated the 6th June, 1935, Part I, page 666.

²The words “Provincial Government” were originally substituted for the words “Local Government” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words were substituted for the words “*Calcutta Gazette*” by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴The words “and shall continue in force for three years only” were repealed by section 2 of, and the Schedule to, the Bengal Expiring Laws Act, 1938 (Ben. Act IV of 1938).

⁵These words were added by sec. 2(a) of the Bengal Electricity Duty (West Bengal Amendment) Act, 1950 (West Ben. Act LXI of 1950).

⁶These words, figures and brackets were inserted by sec. 2(b) of the Bengal Electricity Duty (West Bengal Amendment) Act, 1950 (West Ben. Act LXI of 1950).

⁷This section was substituted for the original section by sec. 2 of the Bengal Electricity Duty (Amendment) Act, 1968 (West Ben. Act XVI of 1968).

of 1935.]

(Section 3.)

- (2) (a) The special rate of duty referred to in clause (2) of article (b) of Part B of the First Schedule shall not be admissible unless—
 - (i) the cost of energy consumed for purposes of electrolysis or heating in electric furnaces is twenty per cent. or more of the total cost of manufacture by electrolysis or heating in electric furnaces, and
 - (ii) separate books of account are maintained showing separately the details of the cost of energy consumed for purposes of electrolysis or heating in electric furnaces and the total cost of manufacture by electrolysis or heating in electric furnaces.
- (b) An industrial undertaking claiming the benefits of the special rate of duty referred to in clause (2) of article (b) of Part B of the First Schedule shall make an application in writing to an officer specially appointed in this behalf by the State Government by notification in the *Official Gazette* and thereupon such officer shall, after giving the applicant an opportunity of being heard and after making such enquiry (if any) as he may think fit, make an order,—
 - (i) if he is satisfied that the requirements of this Act and the rules made thereunder have been complied with, allowing the application, or
 - (ii) if he is not so satisfied, rejecting the application, and such order shall, subject to the provisions of clause (c), be final.
- (c) The State Government may, on application or of its own motion, revise any order made under clause (b).
- (3) Electricity duty shall not be leviable on the units of energy consumed—
 - (a) by any Government, except to the extent specified in the Second Schedule ;
 - (b) by, or in respect of, any—
 - (i) local authority,
 - (ii) railway administration as defined in the Indian Railways Act, 1890. Act IX of 1890.
 - (iii) institution or class of persons specified in the Second Schedule, except to the extent specified in the Second Schedule ;
 - (c) in any—
 - (i) place of public worship, public burial or burning-ground or other place for the disposal of the dead,
 - (ii) premises declared by the State Government to be used exclusively for purposes of public charity,
 - (iii) vessel whether sea-going or inland.

[Ben. Act X

(Sections 4, 5.)

Exemption of newly-formed undertakings.

4. (1) Notwithstanding anything contained in section 3, electricity duty shall not be leviable on energy supplied by a licensee until the expiry of three years from the date on which energy was first supplied in the area of supply ¹[of the licensee] :

Provided that, if a licensee ceases to supply energy in any area of supply or if his license is revoked, and thereafter another licensee supplies energy in such area, the ²[State Government] may in its discretion, by order, exempt the energy supplied by such other licensee from the levy of electricity duty for such period as may be specified in the order.

(2) No modification in any area of supply shall operate to extend the period of exemption mentioned in sub-section (1) in respect of the whole or any part of the area as modified.

Payment of electricity duty.

5. (1) In the case of energy supplied by a licensee the licensee shall collect and pay to the ³[State Government] at the prescribed time and in the prescribed manner, the electricity duty payable under section 3 on the units of energy supplied by him to consumers ⁴* * * *. The duty so payable shall be a first charge on the amount recoverable by the licensee for the energy supplied by him and shall be a debt due by him to the ⁵[State Government] :

Provided that the licensee shall not be liable to pay the duty in respect of any energy supplied by him for which he has been unable to recover his dues.

⁴(1A) In the case of energy supplied by the State Government, the consumer shall pay to the State Government at the prescribed time and in the prescribed manner the electricity duty payable under section 3 on the units of energy supplied by the State Government to the consumer ⁵* * * *.

(2) Where any person fails or neglects to pay, at the prescribed time and in the prescribed manner the amount of electricity duty due from him, the licensee ⁶[or the State Government, as the case may be,] may, without prejudice to the right of the ⁷[State Government] to recover the amount under section 8, and after giving not less than seven clear days' notice in writing

¹These words were substituted for the words "specified in his license" by sec. 8 of the Bengal Electricity Duty (West Bengal Amendment) Act, 1950 (West Ben. Act LXI of 1950).

²See foot-note 2 on page 704, *ante*.

³The words "for the purpose of lights and fans" were omitted by sec. 4 of the Bengal Electricity Duty (Amendment) Act, 1957 (West Ben. Act XXI of 1957).

⁴Sub-section (1A) was inserted by sec. 4(i) of the Bengal Electricity Duty (West Bengal Amendment) Act, 1950 (West Ben. Act LXI of 1950).

⁵These words were inserted by sec. 4(ii) (a), *ibid*.

of 1935.]

(Sections 6—8.)

IX of 1910.

to such person, cut off the supply of energy to such person ; and ^{1*} may, for that purpose, exercise the power conferred on a licensee by sub-section (1) of section 24 of the Indian Electricity Act, 1910, for recovery of any charge or sum due in respect of energy supplied by him.

(3) The licensee shall be entitled, for his cost of collection of the duty, to a rebate of such percentage as may be determined by the ²[State Government] on the amount of the duty collected and paid by him under sub-section (1).

(4) In the case of energy other than energy supplied by a licensee ³[or the State Government] the person who generated ⁴[or supplied] such energy shall pay to the ⁵[State Government] at the prescribed time and in the prescribed manner the electricity duty payable under section 3 on units of such energy.

6. Every licensee, and every person liable to pay such duty under sub-section (4) of section 5 shall, unless he is exempt from payment of electricity duty ⁶[under sub-section (3) of section 3] keep books of account in the prescribed form and submit to the ⁷[State Government] or to the prescribed officer returns in the prescribed form at the prescribed times, showing the units of energy supplied, generated or consumed by him, as the case may be, and the amount of the duty payable thereon and recovered or paid by him under section 5.

Obligation to keep books of account and submit returns.

7. (1) The ⁸[State Government] may, by notification in the ⁹[Official Gazette], appoint inspecting officers to inspect the books of account required by section 6 to be kept. Such officers shall perform such duties and exercise such powers as may be prescribed for the purpose of carrying into effect the provisions of this Act and the rules made thereunder.

Inspecting officers.

(2) Every officer appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Act XLV of 1860.

8. Any sum due on account of electricity duty, if not paid at the prescribed time and in the prescribed manner shall be recoverable, as a public demand—

Recoveries.

(a) in the case of energy supplied by a licensee, at the discretion of the ¹⁰[State Government], either from the consumer, or, subject to the proviso to sub-section (1) of section 5, from the licensee ; ^{11*}

¹The word "he" was omitted by sec. 4(ii)(b) of the Bengal Electricity Duty (West Bengal Amendment) Act, 1950 (West Ben. Act LXI of 1950).

²See foot-note 2 on page 704, ante.

³These words were inserted by sec. 4(iii) of the Bengal Electricity Duty (West Bengal Amendment) Act, 1950 (West Ben. Act LXI of 1950).

⁴These words were inserted by sec. 2 of the Bengal Electricity Duty (Amendment) Act, 1953 (West Ben. Act XXX of 1953).

⁵Substituted for the words, figures and brackets "under the proviso to section 3" by sec. 3 of the Bengal Electricity Duty (Amendment) Act, 1968 (West Ben. Act XVI of 1968).

⁶See foot-note 3 on page 704, ante.

⁷The word "and" was omitted by sec. 5(a) of the Bengal Electricity Duty (West Bengal Amendment) Act, 1950 (West Ben. Act LXI of 1950).

[Ben. Act X

(Sections 9—11.)

¹(aa) in the case of energy supplied by the State Government, from the consumer ; and

(b) in the case of other energy, from the person liable to pay such duty under sub-section (4) of section 5.

Penalties.

9. If any person required by section 6 to keep books of account or to submit returns fails to keep such books in the prescribed form, or to submit such returns in the prescribed form at the prescribed times or if any person intentionally obstructs an inspector appointed under section 7 in the exercise of his powers and duties under this Act and the rules made thereunder he shall be liable on conviction before a Magistrate, to a fine not exceeding ²[one thousand rupees].

Exemption of small generating plants.

10. This Act shall not apply to energy generated by a plant having a capacity not exceeding two and a half kilowatts.

Power to make rules.

11. (1) The ³[State Government] may make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the time and manner of payment of the electricity duty under section 5 ;

(b) the form of the books of account to be kept, the times at which, the form in which and the officer to whom, the returns required by section 6 shall be submitted ;

(c) the duties and powers of inspecting officers ; and

(d) any other matter ⁴[which may be or is required to be prescribed or] for which there is no provision or insufficient provision in this Act and provision is, in the opinion of the ⁵[State Government], necessary for giving effect to the provisions of this Act.

(3) In making a rule under sub-section (1) or sub-section (2) the ⁵[State Government] may provide that a breach of it shall be punishable with a fine not exceeding ⁶[one thousand] rupees.

¹Clause (aa) was inserted by sec. 5(b) of the Bengal Electricity Duty (West Bengal Amendment) Act, 1950 (West Ben. Act LXI of 1950).

²These words were substituted for the word "fifty" by sec. 5 of the Bengal Electricity Duty (Amendment) Act, 1957 (West Ben. Act XXI of 1957).

³See foot-note 2 on page 704, *ante*.

⁴These words were inserted by sec. 4 of the Bengal Electricity Duty (Amendment) Act, 1968 (West Ben. Act XVI of 1968).

⁵These words were substituted for the word "fifty" by sec. 6 of the Bengal Electricity Duty (Amendment) Act, 1957 (West Ben. Act XXI of 1957).

of 1935.]

(The First Schedule.)

¹THE FIRST SCHEDULE.

[See section 3.]

Page 709—

- In clause (a) of article (1) of Part A. of the First Schedule,
(1) **1** for the words and figures “does not exceed 19 naye paise”,
(a) substitute the words and figures “is less than 25 paise”.

(Substituted by West Ben. Act VII of 1966, section 2.)

[No. 4, dated the 1st May 1970.]

the case of a consumer
during the month to which the calculation of duty
relates,

- | | |
|--|--|
| (i) does not exceed fifteen units... | nil, |
| (ii) exceeds fifteen units but does not exceed fifty units | 3 naye paise for each unit of energy consumed, |
| (iii) exceeds fifty units | 6 naye paise for each unit of energy consumed, |
| (b) in other cases | 3 naye paise for each unit of energy consumed. |

Explanation.—In this article, the expression “net charge” means the amount of charge that remains after deduction from the charge of the licensee for the supply of energy any rebate allowed by the licensee for prompt payment.

- (2) In respect of all premises where the supply of energy by a licensee is unmetered for—

	Naye paise per mensm.
Every lamp of less than 30 watts ...	12
Every lamp of 30 watts or more but less than 40	19
Every lamp of 40 watts or more but less than 60	25
Every lamp of 60 watts or more but not exceeding 100	37
and for every additional 15 watts or fraction thereof in excess of 100 in any lamp ...	6

¹This Schedule was substituted for the existing First Schedule by sec. 7(1) of the Bengal Electricity Duty (Amendment) Act, 1957 (West Ben. Act XXI of 1957).

[Ben. Act X

(The Second Schedule.)

¹B. For any other purpose.

(a) Except in cases falling under article (b) or article (c), where energy is consumed in any premises—

(i) otherwise than in connection with any industrial or manufacturing process, for every unit of energy or fraction thereof so consumed 1
naye
paisa.

(ii) in connection with any industrial or manufacturing process, for every two units of energy or fraction thereof so consumed... .. 3
naye
paise.

(b) For every three units of energy or fraction thereof consumed for purposes of—

(1) a cottage industry or a small-scale industry, by any undertaking not being a factory as defined in the Factories Act, 1948, or

(2) electrolysis or heating in electric furnaces, by any industrial undertaking,

where separate meters or sub-meters are installed for indicating the quantity of energy so consumed 1
naye
paisa.

(c) For energy consumed in any premises for lights and fans and for any other purpose in connection with any industrial or manufacturing process carried on therein, in cases where the quantity of energy consumed for lights and fans is not separately indicated by the installation of separate meters or sub-meters or otherwise,.....

the respective rates specified under articles (a) and (b), and, except in the case of premises occupied by a cottage industry or small-scale industry referred to in clause (1) of article (b), a surcharge of ten per cent. of the duty payable for the total quantity of energy consumed in accordance with such rates.

¹Substituted for original Part B of Schedule I by sec. 5 of the Bengal Electricity Duty Act, 1963 (West Ben. Act XVI of 1963).

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1948.

of 1935.]

(The Second Schedule.)

THE SECOND SCHEDULE.

(See proviso to section 3.)

EXEMPTIONS.

(1) ¹[Any Government], save in respect of premises used for residential purposes ;

(2) a railway administration, save in respect of premises used for residential purposes ;

(3) a local authority, save in respect of premises used for residential purposes ;

** * * * *

(7) a hospital or dispensary which is not maintained for private gain ;

(8) any consumer using not more than fifteen units in any one month ;

(9) any consumer, being a landlord, or other person who supplies energy to one-roomed or two-roomed shops or tenements in any one building, in respect of the energy supplied to any such shop or tenement in which not more than fifteen units of energy have been used in any one month.

** * * * *

Explanation (2).—For the purposes of exemption (8) in the premises referred to in Article (2) of the First Schedule every 10 watts shall be deemed to consume one and a half units in a month.

Explanation (3).—For the purposes of exemption (9), whether more than fifteen units of energy have been used in any one month in any shop or tenement for which there is no meter or sub-meter shall be determined by dividing the total number of units supplied during that month to such shops or tenements in the building by the number of such shops or tenements therein.

¹These words were substituted for the words "The Government" by para. 2 of Schedule IV to the Government of India (Adaptation of Indian Laws) Act, 1937.

²Items (4), (5) and (6) and *Explanation (1)* were omitted by sec. 7(2) of the Bengal Electricity Duty (Amendment) Act, 1957 (West Ben. Act XXI of 1957).

Corrected upto 15.3.83

SECTION.

29. Right to supply of water.
30. Power to carry out drainage works.
31. Power to prohibit, remove or modify obstructions to the passage of water in channels.
32. Power to modify obstructions to the passage of water through or over land.
33. Notification of dead or decayed rivers.
34. Limitation of claims for compensation.
35. Claims for compensation.
36. Determination of amount of compensation.
37. Appeals from certain decisions and orders of Collector.
38. Costs.
39. Restrictions on enhancement of rent of agricultural lands in notified area.
40. Publication of notifications.
41. Proceedings not to be invalidated by irregularities.
42. Bar to suits for compensation.
43. Indemnity.
44. Rules.

Bengal Act XVI of 1935

(THE BENGAL DEVELOPMENT ACT 1935.)¹

AMENDED	...	...	{ West Ben. Act XXIV of 1954. West Ben. Act IX of 1958. West Ben. Act I of 1963.
			(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
ADAPTED	...	...	{ (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
			(c) The Adaptation of Laws Order, 1950.

(3rd October, 1935.)

An Act to provide for the development of lands in Bengal and to impose a levy in respect of increased profits resulting from improvement works constructed by the Government.

WHEREAS it is expedient to provide for the development of lands in Bengal and for that purpose to impose a levy in respect of increased profits resulting from improvement works constructed by the Government and to provide further powers in regard to works of improvement ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Development Act, 1935.

(2) It extends to the whole of ²[West Bengal].

(3) It shall come into force on such date³ as the ¹[State Government] may, by notification, appoint.

Short title,
extent and
commence-
ment.

¹For Statement of objects and Reasons, see the *Calcutta Gazette* of 1935, Pt. IV, page 49 ; and for report of the Select Committee, see *ibid*, page 150 ; and for proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol XLV, No. 1, page 217, and *ibid*, No. 2, pages 78 and 121 and *ibid*, Vol. XLVI, No. 1, pages 88, 140, 188, 237, 289, 335 and 393.

²These words were substituted for the word "Bengal" by Art. 3(a) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³This Act came into force on the 23rd January, 1936, vide Notification No. 1-I, dated the 20th January, 1936, published in the *Calcutta Gazette*, dated the 23rd January, 1936, Part I, page 194.

⁴The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Section 2.)

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) "agricultural lands" include lands used for the growing of vegetables and the like but does not include fruit gardens, orchards or homestead lands ;
- (2) "canal" means a canal as defined in clause (1) of section 3 of the Bengal Irrigation Act, 1876 ;
- (3) "Collector" includes any officer specially appointed by the ¹[State Government] to perform all or any of the functions of a Collector under this Act ;
- (4) "dead or decayed river" includes any river into which, or along any part of which, water has ceased to flow as freely as it would have flowed if it had not been diverted or obstructed whether owing to natural causes or as a result of interference by man, and includes also any depression which at one time formed part of a river-bed but through which there is no longer any perennial flow of water ;
- (5) "improvement work" means any work of improvement ²[constructed, before the commencement of Part III of the Government of India 'Act, 1935, by any Government or constructed or proposed to be constructed after that date by the State Government] which the ¹[State Government] has, by notification, declared to be an improvement work for the purposes of this Act :

Ben. Act
III of 1876.

26, Geo. V,
c. 2.

Provided that no road or railway constructed before the commencement of this Act shall be so declared ;

- (6) "notification" means a notification published in the ³[Official Gazette] ;
- (7) "notified area" means any area in respect of which the ¹[State Government] has, by a notification issued under sub-section (1) of section 5, declared its intention to impose an improvement levy, and includes any part of such area ;
- (8) "period for objection" means a period mentioned in a notification under this Act within which objections or suggestions will be received ;

¹See foot-note 4 on page 715, *ante*.

²These words and figures, except the word "State" which was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950, were substituted for the words "constructed by the Government, before or after the commencement of this Act, or proposed to be constructed by the Government" by para. 8 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

³These words were substituted for the words "*Calcutta Gazette*", by s. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

of 1935.]

(Sections 3—6.)

(9) "prescribed" means prescribed by rules made under this Act ; and

(10) "rent" and "tenant" have the same meanings as in the Bengal Tenancy Act, 1885.

VIII of
1895.

3. Whenever, in the opinion of the ¹[State Government], any improvement work has increased or is likely to increase the profits from the produce from any agricultural land, or to increase the outturn of such produce, within any area, the ¹[State Government] may, by notification, declare its intention to impose an improvement levy within that area.

Preliminary, notification of intention to impose improvement levy.

4. A notification under section 3 shall state the the following particulars—

Publication of particulars.

(a) as full a description of the improvement work as, in the opinion of the ¹[State Government], may be practicable ;

(b) the object for which such work has been, or is proposed to be, constructed ; and

(c) the boundaries of the area within which the ¹[State Government] intends to impose the improvement levy.

5. (1) After the expiry of a period for objection to be mentioned in a notification under section 3 the ¹[State Government] shall consider the objections and suggestions, if any, received by it and thereafter shall, by notification, declare its intention either wholly to refrain from imposing the improvement levy or to impose the same in the area concerned or in a specified part thereof, whereupon the area in respect of which the ¹[State Government] has by such a notification declared its intention to impose the improvement levy shall be deemed, for the purposes of this Act, to be a notified area.

Abandonment of intention or declaration of intention to impose improvement levy.

(2) The ¹[State Government] may, so far as may be in the manner hereinbefore provided, from time to time include in or exclude from any notified area any area which, in the opinion of the ¹[State Government], has benefited or has not benefited, as the case may be, from the improvement work.

6. No expenditure shall be incurred for the construction of any improvement work in respect of which the ¹[State Government] intends to impose an improvement levy, and no improvement levy shall be imposed in respect of any improvement work, unless the ²[West Bengal] Legislative ³[Assembly] has, by a resolution, recommended the imposition of an improvement levy in respect of such work :

Recommendation by the West Bengal Legislative Assembly for imposition of improvement levy.

Provided that nothing in this section shall apply to the Damodar Canal (including the Eden Canal) and ⁴[the Mayurakshi Reservoir Project, including] the Bakreswar Canal.

¹ See foot-note 4 on page 715, *ante*.

² See foot-note 2 on page 715, *ante*.

³ This word was substituted for the word "Council" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴ Inserted by sec. 2 of the Bengal Development (Amendment) Act, 1954 (West Ben. Act XXIV of 1954).

[Ben. Act XVI]

(Sections 7—9.)

Imposition
of improve-
ment levy.

7. When the ¹[State Government] is satisfied that a notified area has benefited or is likely to benefit from an improvement work it may, by notification, subject to the provisions of section 6, impose the improvement levy in that area from such date as may be specified in the notification.

Estimate
of increa-
sed outturn
of produce
from
agricultu-
ral land.

8. (1) From time to time an officer appointed by the ¹[State Government] shall, in accordance with rules made under this Act, and after hearing any objections in the prescribed manner, prepare in respect of land throughout a notified area an estimate of the average increase in the outturn of the produce from agricultural land of any class which, in his opinion, has been or is likely to be made possible by any improvement work, on the assumption that the land has produced and will produce the staple food crop notified under section 39 of the Bengal Tenancy Act, 1885, in respect of that land :

VIII of
1885.

Provided that the ¹[State Government] may, at its discretion, direct that the estimate be made on the assumption that the land has produced or will produce some other crop or crops.

(2) The Board of Revenue shall, by notification, publish such estimate and, after a period for objection to be specified in such notification, shall consider the objections and suggestions, if any, received by it and shall report to the ¹[State Government] thereon. Thereafter the ¹[State Government] may reject the estimate or may, by notification, accept it with or without modification, whereupon the accuracy of any estimate so accepted shall not be questioned in any Court.

(3) Where an estimate has been accepted under sub-section (2) in respect of a notified area before the imposition of the improvement levy, such estimate shall, as soon as may be practicable after the expiry of two years from the date of the imposition of the levy, be revised in the manner provided in sub-sections (1) and (2) for the preparation, publication, and acceptance of an estimate.

Fixing
value of
increased
outturn.

9. The ¹[State Government] shall, by notification, fix annually or for such period not exceeding five years as may be specified in the notification the price or prices on the basis of which the value of the average increase in the outturn, as estimated under section 8, from land of any class in a notified area is to be calculated.

¹See foot-note 4 on page 715, *ante*.

of 1935.]

(Section 10.)

10. (1) Notwithstanding anything contained in any other Act the improvement levy shall be imposed in respect of agricultural lands within a notified area at such rate or rates as the ¹[State Government], may, by notification, from time to time declare, and different rates may be so declared for classes of land of different descriptions or having different advantages :

Maximum
limit and
incidence
of improve-
ment levy.

Provided that any rate so fixed shall not exceed one-half of the estimated net increase, resulting from the improvement work, in the profits or one-half of the net value of the estimated increase in outturn :

²Provided further that pending the declaration of any rate or rates under the first paragraph, the State Government may, subject to the provision of sub-section (6), by notification, declare such rate or rates, as it deems suitable, and thereupon improvement levy shall be payable for the time being at such rate or rates, and any amount paid at such rate or rates shall be subsequently adjusted against the amount payable at the rate or rates declared under the first paragraph.

Such improvement levy shall be payable by the occupiers of such lands within the notified area.

Explanation.—In this sub-section the expression “estimated increase in outturn” means the average increase in the outturn of agricultural produce as estimated under section 8.

(2) The rate or rates of the improvement levy shall be fixed under sub-section (1) for one year or for such period not exceeding five years as may be specified in the notification issued under that sub-section.

(3) For the purposes of sub-section (1) the net increase in the profits and the net value of the estimated increase in outturn shall be estimated, in accordance with rules made under this Act, on the price or prices fixed under section 9.

(4) The ¹[State Government] may, by rules made under this Act, declare what persons or classes of persons shall be deemed, for the purposes of sub-section (1), to be occupiers of land but no person shall, by such rules, be declared to be an occupier of land unless, otherwise than as a hired labourer, he cultivates such land or (if it is not cultivated) unless he is in direct possession of such land.

(5) Notwithstanding anything contained in sub-section (4), where a person under the system generally known as ‘adhi’, ‘barga’ or ‘bhag’, cultivates the land of another person on condition of delivering a share of the produce to that person or receiving a share thereof from him, the person whose land is cultivated and the person who cultivates it shall each be deemed, for the purposes of sub-section (1), to be an occupier of such land, and each shall be liable to pay a prescribed proportion of the improvement levy imposed in respect of such land, and any contract to the contrary shall, to that extent, be void.

¹See foot-note 4 on page 715, *ante*.

²This further proviso was inserted with retrospective effect by sec. 2 of the Bengal Development (Amendment) Act, 1958 (West Ben. Act IX of 1958).

[Ben. Act XVI]

(Sections 11, 12.)

(6) In the case of any land, the amount of improvement levy realised for any year—

- ¹(a) in respect of the Mayurakshi Reservoir Project, including the Bakreswar Canal, shall not exceed ten rupees per acre ;
- (b) in respect of the Damodar Canal and the Eden Canal shall not exceed five rupees eight annas per acre :

Provided that in the case of any land which was irrigated from the Eden Canal in any year during the ten years prior to the first day of April, 1935, such amount shall not exceed three rupees eight annas per acre.

Additional
improvement
levy
in certain
cases.

11. (1) Notwithstanding anything contained in section 10, if in any notified area any unculturable waste, swamp, or sand has, as a result of an improvement work, become culturable land, and such land is thereafter settled with any tenant, the person who settles the land shall be liable to pay, in one sum, an improvement levy of such amount as may be fixed by the Collector, in accordance with rules made under this Act, after considering any objection that may be made in the prescribed manner by such person.

(2) The amount fixed under sub-section (1) shall not exceed one-half of the difference between—

- (a) the amount which the Collector estimates to be the usual *salami* for a like area of land, in the vicinity, similar in its description and its advantages to the land as it is at the time of the settlement, and
- (b) the amount which the Collector estimates to have been the usual *salami* before the commencement of the improvement work, for a like area of land, in the vicinity, similar in its description and its advantages to the land as it was at that time.

Such levy shall be additional to the levy payable under section 10 by the occupier of the land.

Amount of
improvement
levy
after
realisation
of capital
cost and
other
charges.

12. When in respect of any improvement work—

- (a) the capital cost of such work, including the cost of any extensions, improvements or modification of the work,
- (b) the interest charges on such capital cost,
- (c) any working loss in any year or years, and
- (d) the interest on such loss,

¹Clause (a) was substituted for the original clause by sec. 8 of the Bengal Development (Amendment) Act, 1954 (West Ben. Act XXIV of 1954).

of 1935.]

(Sections 13, 14.)

as determined by the ¹[State Government], have been recovered in full out of the proceeds of the improvement levy, by such annual allocations as may be prescribed, the amount of the improvement levy to be realised for each year in respect of such work shall thereafter be reduced to such a sum as the ²[West Bengal] Legislative³[Assembly] may, by a resolution, recommend:

Provided that in respect of the ⁴[Damodar and Eden] Canals such sum shall not exceed the amount required to meet the annual cost, as determined by the ¹[State Government], of maintenance and supervision of the improvement work and of collection of the improvement levy.

Explanation.—The term “working loss” means the sum by which the proceeds of the improvement levy in any year or years fall short of the amount necessary to meet—

- (i) the annual allocation for such year or years in respect of the charges specified in clauses (a) and (b), and
- (ii) the cost, as determined by the ¹[State Government], of maintenance and supervision of the improvement work, and of collection of the improvement levy, during such year or years.

13. The Collector shall, from time to time, prepare and publish in the prescribed form and manner for a notified area or any part thereof a statement showing—

Preparation and publication of statements of imposition of improvement levy.

- (i) the name of every person who is liable to pay the improvement levy in respect of any land in such area or part, and
- (ii) the amount of improvement levy to be paid by each such person, annually or otherwise, in respect of such land.

14. The Collector shall serve a notice of demand in the prescribed form and manner and containing the prescribed particulars, on every person whose name appears in a statement published under section 13 requiring him to pay the levy by such date or dates as may be specified in the notice.

Notice of demand.

¹See foot-note 4 on page 715, *ante*.

²See foot-note 2 on page 715, *ante*.

³See foot-note 3 on page 717, *ante*.

⁴Substituted for the words “Damodar, Eden and Bakreswar” by sec. 4 of the Bengal Development (Amendment) Act, 1954 (West Ben. Act XXIV of 1954).

(Sections 15—18.)

Republi-
cation of
statements
and revised
notice of
demand.

15. (1) After forty days from the date of publication of a statement under section 13 the Collector shall, in accordance with rules made under this Act, republish the statement with such modifications as he may have made as a result of representations by persons whose names were included therein, and, subject to any decisions by an appellate or revisional authority, all entries in the statement as thus republished shall be presumed to be correct in every particular for the purposes of this Act.

(2) If the Collector makes any modification referred to in sub-section (1) in the statement he shall serve on the person concerned a revised notice of demand in the prescribed form and manner and containing the prescribed particulars.

Supple-
mentary
statements.

16. (1) The Collector may, from time to time, add to or alter in the prescribed manner any statement republished under sub-section (1) of section 15. In such case, the Collector shall publish in the prescribed form and manner a supplementary statement showing any addition or alteration so made, and the provisions of this Act shall apply to such supplementary statement as if it were a statement published under section 13.

(2) Where any addition to or alteration in a statement is required as a result of a decision of an appellate or revisional authority, the Collector shall add to or alter the statement accordingly, and it shall not be necessary to publish any supplementary statement in respect thereof under sub-section (1).

Appeals in
regard to
improve-
ment levy.

17. (1) Any person may appeal within thirty days from the date of service of the notice under section 14 or of a revised notice, if any, under sub-section (2) of section 15 or from the date of republication of a statement under sub-section (1) of section 15, whichever is later, to the Commissioner of the Division, on the ground that he has been wrongly shown in the statement as liable to pay the improvement levy or that the amount shown in such statement as payable by him is incorrect, and the decision of the Commissioner of the Division on such appeal shall, subject to the provision of sub-section (2), be final.

(2) The Board of Revenue may, on application made within thirty days from the date of the order of the Commissioner of the Division, revise such order.

Bar to ob-
jections to
improve-
ment levy,
except as
provided
in this Act.

18. No objection shall be taken to the imposition of an improvement levy, nor shall the liability of any person to pay the same be questioned, in any other manner than that provided in this Act.

of 1935.]

(Sections 19—24.)

19. Copies of entries in a statement published under section 13 or republished under sub-section (1) of section 15 shall be made available in the prescribed manner on payment of the prescribed fee.

Copies of entries in statement.

20. Notwithstanding anything contained in this Act, the Collector may, subject to rules made by the ¹[State Government], at any time grant abatement or remission of the improvement levy payable under this Act.

Power of Collector to grant abatement or remission of improvement levy.

21. (1) Subject to the provisions of section 20, the Collector shall, in the prescribed manner, collect from any person whose name appears in a statement republished under sub-section (1) of section 15 the amount shown therein as due from him together with any interest payable under sub-section (2).

Collection of improvement levy.

(2) If any amount of improvement levy due from any person is not paid on or before the prescribed date, interest at such rate, not exceeding six and a quarter *per cent.* per annum, as the ¹[State Government] may fix from time to time, shall be payable thereon from the date of the default.

22. If any person has paid any amount as improvement levy which, in accordance with the decision of the appellate or revisional authority, or in the opinion of the Collector, was not payable by such person, the Collector shall, in the prescribed manner, refund the amount to such person.

Refunds.

23. All arrears of improvement levy, together with interest due thereon, and other dues payable to the ¹[State Government] under this Act shall be recoverable as public demands.

Recovery of arrears and other dues.

24. (1) If, in the opinion of the ¹[State Government], it is desirable for the purpose of collecting information regarding the outturn of produce from any agricultural land, the ¹[State Government] may, by general or special order, authorise any officer and his servants and workmen, subject to rules made under this Act, to enter upon any land and to do any acts necessary for the purpose of obtaining such information :

Power to enter on land and to cut and remove crops.

Provided that no person shall enter into any building or upon any enclosed courtyard or garden attached to a dwelling house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

¹See foot-note 4 on page 715, *ante*.

[Ben. Act XVI]

(Sections 25—27.)

(2) If, in the opinion of any officer authorised under sub-section (1), it is necessary to remove any crop for the purpose of ascertaining, by weighment or otherwise, the amount of the produce derived from any land, he may, subject to rules made under this Act, and after giving notice in writing, forthwith take possession of any standing crop on such land or part thereof, and may cause such crop to be cut and to be removed within such reasonable period as he may consider necessary.

(3) In every case under sub-section (2), such officer shall offer to the persons interested compensation for the standing crop cut and, subject to rules made under this Act, for any other damage caused during the process of cutting and removal; and, if such offer is not accepted, the value of the crop cut and the amount of the damage so caused shall be assessed by the Collector in the prescribed manner.

Power to compel production of statements and documents.

25. (1) Subject to rules made under this Act, any officer authorised under sub-section (1) of section 24 may, by notice, require any person to make and deliver to him a statement or to produce records or documents in his possession or control relating to any land mentioned in that sub-section, at a time and place specified in the notice.

(2) Every person required to make or deliver a statement or to produce any record or document under this section shall be deemed legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

Act XLV of 1860.

Power of Collector to enforce attendance of witnesses and production of documents.

26. For the purposes of any inquiry under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the persons interested or any of them, and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

Act V of 1908.

Dues payable under other Acts in respect of improvement works.

27. (1) Notwithstanding anything contained in any other Act, no person who has been declared liable to pay an improvement levy in respect of any land benefited by an improvement work shall be liable to pay any rates, dues or charges to the ¹[State Government] under any of the Acts mentioned in the Schedule in return for any benefit derived by such land from the improvement work.

(2) When an improvement levy is imposed under this Act in any area in respect of an irrigation work and an agreement exists for the supply of water under the Bengal Irrigation Act, 1876, to any land in that area, the improvement levy shall not be payable in respect of such land until the expiry of the agreement.

Ben. Act III of 1876.

¹The words "Provincial Government" were originally substituted for the word "Government" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1934.]

(Sections 28—32.)

Ben. Act
III of
1876.

28. (1) Within a notified area water may be supplied from a canal to any land notwithstanding the fact that no application has been made under section 74 of the Bengal Irrigation Act, 1876.

Supply of water and application of rules under the Bengal Irrigation Act, 1876.

(2) In any notified area specified by the ¹[State Government], by notification, in this behalf any person by whom an improvement levy is payable under section 10 shall, subject to the provisions of sub-section (1) of section 27, be bound by any rules made under the Bengal Irrigation Act, 1876, for the time being in force, as if he had presented an application under section 74 of the said Act and such application had been granted.

29. Notwithstanding anything contained in the Bengal Irrigation Act, 1876, no person shall have a right to a supply of water under that Act in a notified area within any period prescribed in this behalf.

Right to supply of water.

30. Whenever it appears expedient to carry out any scheme of drainage for the betterment of public health or for the improvement of any land or in connection with irrigation works, the ¹[State Government] may, after issuing a notification and, in the prescribed manner, calling for and considering objections, if any, cause such a scheme to be drawn up and carried into execution, and any officer authorised in this behalf by the ¹[State Government] may exercise in connection with such scheme all or any of the powers conferred on Canal Officers by sections 33, 34 and 35 of the Bengal Irrigation Act, 1876, and thereupon the provisions of sections 36, 37 and 38 of that Act shall be applicable as if such officer were a Canal Officer.

Power to carry out drainage works.

31. The ¹[State Government] may, if it is of opinion that in any area to be specified in a notification the whole or part of any river, stream, natural water-channel or natural drainage-course should be open to the unrestricted passage of water, exercise such powers as may be exercised under the Bengal Irrigation Act, 1876, with regard to the prohibition, removal or modification of obstructions in any river, stream, natural water-channel or natural drainage-course, and the provisions contained in that Act with regard to and, subject to the provisions of section 35, incidental to the exercise of such powers shall be applicable *mutatis mutandis* so far as they may reasonably be applied.

Power to prohibit, remove or modify obstructions to the passage of water in channels.

32. (1) The ¹[State Government] may, by notification, declare that in any area specified in the notification every person shall be bound, for irrigation purposes or for the drainage of land which has been irrigated, to afford a free passage to water through or over any land in his possession or under his control ²[and, for that purpose, to allow, when so required by the Collector by order made in this behalf, the construction and maintenance of such channels as may be necessary without causing unnecessary loss or damage to such land.]

Power to modify obstructions to of water through or over land.

¹See foot-note 4 on page 715, *ante*.

²These words were added by sec. 2 (a) of the Bengal Development (Amendment) Act, 1963 (West Ben. Act I of 1963).

(Section 33.)

¹(1A) If any person refuses to comply with an order of the Collector under sub-section (1) for the construction or maintenance of any channel, the Collector may cause the channel to be constructed or maintained, as the case may be, and may recover the costs thereof from such person.

¹(1B) Notwithstanding anything contained in any other law for the time being in force, no person shall be entitled to claim any compensation for any damage or loss which may be caused as a result of the construction or maintenance of any channel under sub-section (1) or sub-section (1A).

(2) After the issue of a notification under sub-section (1) the Collector, if in his opinion the free passage of water through or over any land in such area is necessary for irrigation purposes or for the drainage of land which has been irrigated, may, subject to rules made under this Act, from time to time issue a general or special order upon persons who have such land in their possession or under their control to modify, in such manner and within such period as may be specified in the order, any artificial obstruction that exists on such land ²[or in any channel constructed thereon under sub-section (1) or sub-section (1A)] to such free passage, or to show cause against such order.

(3) If the Collector is not satisfied with any cause that may have been shown, he shall fix a further period within which the obstruction shall be modified.

(4) If any person fails to comply with an order under sub-section (2) or sub-section (3), or under section 37, in respect of such modification, he shall be liable on conviction by a magistrate to a fine not exceeding fifty rupees for each such offence, and to a further fine not exceeding five rupees for each day after conviction during which the obstruction remains unmodified, and the Collector may cause the obstruction to be modified and may recover the cost of modification from such person.

33. (1) The ³[State Government] may, from time to time, publish by notification a list of rivers or depressions which it intends to declare to be dead or decayed rivers.

(2) In any list published under sub-section (1) any river or depression may be described either by name or by reference to its geographical situation.

(3) After the expiry of a period for objection to be mentioned in a notification under sub-section (1), the ³[State Government] shall consider the objections and suggestions, if any received by it and thereafter may, by notification, declare any, river or depression notified under that sub-section to be a dead or decayed river, and such declaration shall be final and shall not be questioned in any Court or in any other manner whatsoever.

¹Sub-sections (1A) and (1B) were inserted by sec. 2(b) of the Bengal Development (Amendment) Act, 1963 (West Ben. Act I of 1963).

²Inserted by sec. 2(c), *ibid.*

³See foot-note 4 on page 715, *ante*.

of 1935.]

(Sections 34—36.)

34. No person shall be entitled to claim any compensation under this or any other Act for any injury, damage or loss caused by a dead or decayed river which has been revived as a result of an improvement work, or by any other river into which it flows or spills, unless the injury, damage or loss is such as would have rendered the ¹[State Government] liable to pay compensation had the river not been revived.

Limitation of claims for compensation.

Explanation.—A dead or decayed river is said to be revived when an increased volume of water is, by any means whatsoever, caused to flow freely into or along any part of such dead or decayed river.

35. Subject to the provisions of section 34, whenever—

(a) any damage is caused as a result of the prohibition, removal or modification of an obstruction under section 31 or section 32, or

(b) any land or right of property is injuriously affected by any improvement work in respect of which an improvement levy is imposed under this Act,

Claims for compensation.

the person by whom any damage or loss is sustained shall not be entitled to claim any compensation for such damage or loss under any other Act, but such person may, not later than six months after the first occurrence of the injury in respect of which the claim is preferred, prefer to the Collector a claim for compensation.

36. (1) When a claim is preferred under section 35, the Collector shall, in the prescribed manner, after such inquiry as he deems proper and after considering any representations which may be made to him, determine the amount of compensation, if any, which shall be granted.

Determination of amount of compensation.

(2) In determining whether any and, if so, what amount of compensation shall be granted, the Collector shall be bound by the provisions of any rules made by the ¹[State Government] under this Act regulating the grant of compensation under this section.

(3) When the amount of compensation has been determined under sub-section (1), if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall, in the prescribed manner, refer such dispute to the Court, and such Court or any other Court mentioned in sub-section (5) to which the dispute may, subject to rules made under this Act, be transferred for decision, shall decide the same.

(4) In every reference under sub-section (3) the costs shall be at the discretion of the Court.

(5) In this section “Court” means a principal Civil Court of original jurisdiction and includes the Court of any Additional Judge, Subordinate Judge or Munsif whom the ¹[State Government] may appoint, by name or by virtue of his office, to perform concurrently with any such principal Civil Court the functions of the Court under this section within any specified local limits and,

¹See foot-note 4 on page 715, ante.

[Ben. Act XVI]

(Sections 37—39.)

in the case of a Munsif up to the limits of the pecuniary jurisdiction with which he is vested under section 19 of the Bengal, Agra and Assam Civil Courts Act, 1887.

XII of
1887.

Appeals
from
certain
decisions
and orders
of Col-
lector.

37. (1) Any person aggrieved by a decision or order of the Collector under section 20, sub-section (3) of section 24, section 32 or sub-section (1) of section 36 may appeal, within thirty days from the date of such decision or order, to the Commissioner of the Division, whose decision on such appeal shall, subject to the provisions of sub-section (2), be final.

(2) The Board of Revenue may, on application made within thirty days from the date of the order of the Commissioner of the Division, revise such order.

Costs.

38. In every appeal under sub-section (1) of section 17, or under sub-section (1) of section 37, and in every revision under sub-section (2) of section 17 or under sub-section (2) of section 37, the costs shall be at the discretion of the appellate or revisional authority, and such costs shall be recoverable as a public demand.

Restri-
ctions on
enhance-
ment of
rent of
agricul-
tural lands
in notified
area.

39. Notwithstanding anything contained in the Bengal Tenancy Act, 1885, when an improvement levy has been imposed in respect of any agricultural land—

VIII of
1885.

(a) the rent payable for such land at the time of the imposition of the levy or fixed thereafter in accordance with the provisions of clause (b) shall not be enhanced on account of—

(i) benefits derived from the construction of any improvement work, or

(ii) an increase in the productive powers of the land due to fluvial action ;

(b) if a settlement is made of such land with a tenant thereafter, the rate of rent at which such land is settled shall not exceed the average rate of money rent payable, at the time of such settlement, by tenants of a similar class for land of a similar description and with similar advantages in the vicinity, and any rent in excess of such rate shall not be recoverable :

Provided that such average rate may be exceeded on the grounds specified in clause (b) or clause (c) of section 30 of the Bengal Tenancy Act, 1885, by such amount as would be allowable in a suit for enhancement of rent under the said section if the land had been settled with a tenant at such average rate at the time of the imposition of the levy.

A stipulation in any contract by which a tenant taking settlement of such land agrees to pay any amount in excess of such rent, otherwise than as *salami*, shall not be binding on such tenant to the extent of such excess.

of 1935.]

(Sections 40—44.)

40. The ¹[State Government] shall cause every notification under this Act to be published in such manner and such places as it thinks fit.

Publica-
tion of
notifica-
tions.

41. No proceedings under this Act shall be defeated or invalidated by reason of any defect or omission in the publication or service of any notification, statement, notice or order unless material injury is done to any person by such defect or omission.

Procees-
ings not
to be inva-
lidated by
irregulari-
ties.

42. No suit shall lie in any Civil court for compensation in respect of any injury, damage or loss resulting from an improvement work or from anything done under this Act.

Bar to
suits for
compensa-
tion.

43. No suit or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Indemnity.

44. (1) The ¹[State Government] may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

Rules.

(2) In particular and without prejudice to the generality of the foregoing power, the ¹[State Government] may make rules to provide for all or any of the following matters, namely :—

- (a) the manner in which the average increase in the outturn of agricultural produce shall be estimated under section 8 and the manner of hearing objections under sub-section (1) of that section ;
- (b) the persons or classes of persons who shall, for the purposes of sub-section (1) of section 10, be deemed to be occupiers of land ;
- (c) the manner in which the net increase in the profits and the net value of the estimated increase in outturn shall be estimated under sub-section (3) of section 10 ;
- (d) the proportion of improvement levy payable under sub-section (5) of section 10 by different classes of "adhiars", "bargadars" or "bhagdars" and by the persons whose land is cultivated by such "adhiars", "bargadars" or "bhagdars" ;
- (e) the determination of the amount of improvement levy payable under section 11 and the manner in which objections under sub-section (1) of that section shall be made ;

¹See foot-note 4 on page 715, *ante*.

[Ben. Act XVI]**(Section 44.)**

- (f) the annual allocations to be made under section 12 in respect of each improvement work ;**
- (g) the form and manner of preparation and publication of a statement under section 13 and its republication under sub-section (1) of section 15 ;**
- (h) the form and contents of the notice of demand under section 14 and of a revised notice of demand under sub-section (2) of section 15 and the manner of service of such notice ;**
- (i) the manner in which a statement republished under sub-section (1) of section 15 may be added to or altered, and the form and manner of publication of a supplementary statement under section 16 ;**
- (j) the procedure to be followed by the appellate and revisional authorities mentioned in sections 17 and 37;**
- (k) the manner of, and the amount of fees payable for, supplying copies under section 19 ;**
- (l) the grant of abatement or remission of the improvement levy under section 20 ;**
- (m) the manner of collection of the improvement levy and interest under sub-section (1) of section 21 ;**
- (n) the date of payment of improvement levy under sub-section (2) of section 21 ;**
- (o) the manner of refund of improvement levy under section 22 ;**
- (p) the procedure and conduct of officers and persons authorised under sub-sections (1) and (2) of section 24 ;**
- (q) the offer of compensation, and the manner of assessment by the Collector of damage, under sub-section (3) of section 24 ;**
- (r) the exercise of powers under sub-section (1) of section 25 to enforce the making and delivery of statements and production of documents ;**
- (s) the period within which persons shall not have any right to a supply of water under section 29 ;**
- (t) the manner in which objections shall be called for and dealt with under section 30 ;**
- (u) the issue of orders under sub-section (2) of section 32 for the modification of obstructions to the free passage of water through or over land ;**
- (v) the procedure to be followed by the Collector under sub-section (1) and sub-section (3) of section 36 ;**
- (w) the transfer of disputes for decision under sub-section (3) of section 36 ; and**
- (x) the grant of compensation under section 36.**

of 1935.]

(The Schedule.)

THE SCHEDULE.

[See sub-section (1) of section 27.]

Ben. Act
III of
1876.

(1) The Bengal Irrigation Act, 1876.

Ben. Act
VI of
1880.

(2) The Bengal Drainage Act, 1880.

Ben. Act
II of 1882.

(3) The Bengal Embankment Act, 1882.

Ben. Act
VIII of
1895,

(4) The Bengal Sanitary Drainage Act, 1895.

Ben. Act
IV of
1915.

(5) The Bengal Embankment (Sunderbans) Act, 1915.

Ben. Act
VI of
1920.

(6) The Bengal Agricultural and Sanitary Improvement Act, 1920.

Bengal Act XVII of 1935

[THE BENGAL LAND-REVENUE (INTEREST) ACT, 1935.]¹

AMENDED ... Ben. Act III of 1939.

ADAPTED ... { (a) The Government of India
(Adaptation of Indian
Laws) Order, 1937.
(b) The Adaptation of Laws
Order, 1950.

(26th September, 1935.)

An Act to provide for the removal of doubts as to the payment of interest on arrears of land-revenue.

WHEREAS it is expedient to provide for the removal of any doubts as to the liability to pay interest on arrears of land-revenue ;

It is hereby enacted as follows :—

1. This Act may be called the Bengal Land-Revenue (Interest) Act, 1935. Short title.

2. (1) Notwithstanding anything contained in any other law, interest shall be payable, and shall be deemed with effect from the 19th day of January, 1933, to have been payable, on all arrears of land-revenue, and such interest shall be recoverable as a public demand. Interest on arrears of revenue.

(2) All such interest shall,—

(a) in respect of the period from the 19th day of January, 1933, up to the commencement of this Act, be deemed to have been payable at the rate of seven and a half *per centum per annum*,

(b) in respect of any period after the commencement of this Act, be payable at such rate not exceeding ²[six and a quarter] *per centum per annum* as the ³[State Government] may, by notification in the ⁴[*Official Gazette*], determine.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1935, Pt. IV, page 148 ; and for proceeding of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLV, No. 3, page 375 and *ibid*, Vol. XLVI, No. 1, page 74.

²These words were substituted for the words "seven and a half" by the Sch. to the Bengal-Rates of Interest Act, 1939 (Ben. Act III of 1939).

³The words "Provincial Government" were originally substituted for the words "Local Government" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words "*Calcutta Gazette*" by paragraph 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

Bengal Act XX of 1935

[THE BENGAL VILLAGE SELF-GOVERNMENT (TEMPORARY PROVISIONS) ACT, 1935.]¹

(31st October, 1935).

An Act to provide for certain matters in connection with certain elections for union boards held before the commencement of the Bengal Village Self-Government (Amendment) Act, 1935.

WHEREAS it is expedient to make special provision for the term of office of members of union boards in certain cases in which general elections were held before the commencement of the Bengal Village Self-Government (Amendment) Act, 1935, and for the removal of any doubts as to the validity of such elections and of appointments of members made in such cases ;

Ben. Act
VIII of
1935.

It is hereby enacted as follows :—

1. This Act may be called the Bengal Village Self-Government (Temporary Provisions) Act, 1935.

Short title.

Ben. Act
V of 1919.

2. Notwithstanding anything contained in the Bengal Village Self-Government Act, 1919—

Term of office of members of union boards in certain cases, and validity of certain elections and appointments.

- (1) Where a general election has been held for a union board before the commencement of the Bengal Village Self-Government (Amendment) Act, 1935 (hereinafter referred to as the Amending Act), but after such election the first meeting, at which a quorum is present, of the newly elected and appointed members of such union board has not been held, the term of office of the formerly elected and appointed members of the union board shall be governed by the provisions of section 11 of the Bengal Village Self-Government Act, 1919, as if it had not been amended by clause (1) of section 6 of the amending Act.

- (2) Where a member has been duly elected at such general election, or has been duly appointed after such general election but before the commencement of the amending Act, such member shall be deemed to be duly elected or appointed, as the case may be, under the Bengal Village Self-Government Act, 1919, as amended by the amending Act, and his election or appointment shall be deemed to be valid for all purposes of the said Act, as so amended.

¹ For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1935, Pt. IV, page 182 ; and for proceedings of the Council, see the Proceedings of the Bengal Legislative Council, Vol. XLVI, No. 1, page 80 and *ibid.* No. 2, page 357.

PART II

**Acts made by the Governor of Bengal under section
72E of the Government of India Act during the
period from 1920 to 1935.**

The Bengal Criminal Law Amendment Act 1925¹

SUPPLEMENTED—

The Bengal Criminal Law Amendment (Supplementary) Act, 1925 made by the Governor General under section 67-B of the Government of India Act.

REPEALED IN PART AND AMENDED—Ben. Act III of 1930.

AMENDED—

{ Ben. Act XI of 1932.
{ Ben. Act XXI of 1932.
{ Ben. Act VII of 1934.

ADAPTED—

(a) The Government of India (Adaptation of Indian Laws) Order, 1937.
(b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
(c) The Adaptation of Laws Order, 1950.

(21st March, 1925.)

An Act to supplement the ordinary criminal law in Bengal.

WHEREAS it is expedient to supplement the ordinary criminal law in Bengal ;

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Criminal Law Amendment Act, 1925.

Short title, commencement and extent.

(2) It shall come into force on such date² as the ³[appropriate Government] may, by notification in the ⁴[Official Gazette], direct ;

(3) It extends to the whole of ⁵[West Bengal] ; * * *

2. (1) In this Act, unless there is anything repugnant in the subject or context, “the Code” means the Code of Criminal Procedure, 1898.

Definition.

5 & 6 Geo. V, c. 61 ;
6 & 7 Geo. V, c. 33 ;
9 & 10 Geo. V, c. 101.

Act V of 1898.

¹No number was given to this Act. It was made by the Governor of Bengal under section 72E of the Government of India Act.

²This Act was brought into force on the 24th April, 1925 (*vide* notification No. 1593X, dated the 4th April, 1925, published in the *Calcutta Gazette* of the 9th April, 1925, Part I, page 551.

³These words were substituted for the words “Local Government” by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴These words were substituted for the words “Calcutta Gazette” by paragraph 4(1), *ibid*.

⁵These words were substituted for the word “Bengal” by Art. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

⁶The word “and” and sub-section (4) were omitted by sec. 9 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

(Sections 3, 4.)

¹(2) In this Act "the appropriate Government" means the Central Government in relation to any of the matters enumerated in List I in the Seventh Schedule to ²[the Constitution] and the ³[State] Government in relation to other matters.

Power of appropriate Government to direct trial by Commissioners in certain cases.

3. (1) The "[appropriate Government] may, by order in writing, direct that any person accused of any offence specified in the First Schedule shall be tried by Commissioners appointed under this Act.

(2) No order under sub-section (1) shall be made in respect of, or be deemed to include, any person who has been committed under the Code for trial before a High Court, but save as aforesaid an order under that sub-section may be made in respect of, or may include, any person accused of any offence specified in the First Schedule whether such offence was committed before or after the commencement of this Act.

Appointment and qualification of Commissioners.

4. (1) Commissioners for the trial of persons under this Act shall be appointed by the "[appropriate Government].

(2) Such Commissioners may be appointed for the whole of "[West Bengal] or for any part thereof, or for the trial of any particular accused person or persons.

(3) All trials under this Act shall be held by three Commissioners, of whom at least two shall be persons who at the time of appointment under this section are serving as, and have for at least three years served as or exercised the powers of, Sessions Judges or Additional Sessions Judges, or are persons qualified under ⁴[clause (2) of article 217 of the Constitution], for appointment as Judges of a High Court.

⁷(4) At any time before the commencement of the trial of any person under this Act, the "[appropriate Government] may, by an order in writing stating the reasons therefor, withdraw the case of such person from the Commissioners appointed for the trial and transfer it for trial to three other Commissioners appointed in this behalf.

¹Sub-section (2) was inserted by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937.

²These words were substituted for the words "the Government of India Act, 1935" by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

³The word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

⁴See foot-note 3 on page 739, *ante*.

⁵See foot-note 5 on page 739, *ante*.

⁶The words and figures "section 220 of the Government of India Act, 1935" were originally substituted for the words and figures "sub-section (3) of section 101 of the Government of India Act" by para. 3 and Sch. IV to the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter these words within square brackets were substituted for the words and figures "section 220 of the Government of India Act, 1935", by paragraph 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order, 1950.

⁷Sub-section (4) was added by sec. 2 of the Bengal Criminal Law Second Amendment Act, 1932 (Ben. Act XI of 1932).

(Sections 5—7A.)

5. (1) Commissioners appointed under this Act may take cognisance of offences without the accused being committed to them for trial, and in trying accused persons, shall ¹[subject to the provisions of section 9A] record evidence in the manner prescribed in section 356 of the Code and shall, in other respects also, subject to this Act and to any rules made thereunder, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

Procedure of Commissioners.

(2) In the event of any difference of opinion among the Commissioners, the opinion of the majority shall prevail.

6. (1) The Commissioners may pass upon any person convicted by them any sentence authorised by law for the punishment of the offence of which such person is convicted :

Powers of Commissioners.

²Provided that where the Commissioners convict any person of any offence punishable under the first paragraph of section 307 of the Indian Penal Code, committed after the commencement³ of the Bengal Criminal Law⁴ Second Amendment Act, 1932, they may pass on such person a sentence of death or of transportation for life.

Act XLV of 1860.
Ben. Act XI of 1932.

(2) If in any trial under this Act it is found that the accused person has committed any offence, whether such offence is or is not an offence specified in the First Schedule, the Commissioners may convict such person of such offence and pass any sentence authorised by law for the punishment thereof,

7. The provisions of the Code, so far only as they are not inconsistent with the provisions of, or the special procedure prescribed by or under, this Act shall apply to the proceedings of Commissioners appointed under this Act, and such Commissioners shall have all the powers conferred by the Code on a Court of Sessions exercising original jurisdiction.

Application of Code of Criminal Procedure to proceedings of Commissioners.

⁴7A. Notwithstanding anything contained in this Act or in any other Act—

(1) (a) if after the commencement of a trial by Commissioners under this Act any person surrenders or is arrested who, in the opinion of the ⁵[appropriate Government] might, if he had surrendered or been arrested before the commencement of the trial, have been tried jointly

Procedure for trial of co-accused who surrenders or is arrested after commencement of trial or conclusion of previous trial.

¹These words, figure and letter were inserted by sec. 10 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

²This proviso was added by sec. 3 of the Bengal Criminal Law Second Amendment Act, 1932 (Ben. Act XI of 1932).

³Ben. Act XI of 1932 came into force on the 20th October, 1932.

⁴Section 7A was inserted by sec. 11 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

⁵See foot-note 3 on page 739, *ante*.

(Section 7A.)

with the persons under trial the ¹[appropriate Government] may direct that he shall be placed on his trial jointly with such other persons at the said trial :

Provided that the name of such person was included with the names of the persons under trial in the order under sub-section (1) of section 3 directing their trial or in the report under clause (a) of sub-section (1) of section 173 of the Code ;

(b) when any person in respect of whom a direction has been made under sub-clause (a) is produced before the Commissioners, any evidence already recorded in the trial may be admitted as evidence against him or in his favour ;

(2) in a trial by Commissioners under this Act of any person who has surrendered or been arrested after the conclusion of a previous trial under this Act at which, in the opinion of the Commissioners, he might, if he had surrendered or been arrested before the commencement of such previous trial, have been tried jointly with the persons then tried any evidence recorded in such previous trial may be admitted as evidence against him or in his favour :

Provided that the name of such person was included with the names of the persons previously tried in the order under sub-section (1) of section 3 directing their trial or in the report under clause (a) of sub-section (1) of section 173 of the Code ;

(3) where any evidence recorded in the absence of the accused person is admitted under sub-clause (b) of clause (1) or clause (2) the Commissioners may on their own motion recall any witness who has given such evidence in order that he may be further examined or cross-examined and shall, at the instance of the accused person or his pleader, recall any such witness for such purpose, unless, in the opinion of the Commissioners, for reasons to be recorded in writing, it is not necessary in the interest of justice that the witness should be recalled ;

(4) the provisions of this section shall apply—

(i) to the trial of persons who surrendered or were arrested before the date of the commencement² of the Bengal Criminal Law Amendment Act, 1934, in respect of any offence for which they have not at such date been placed on trial, as well as to the trial of persons who surrender or are arrested after that date ;

Ben. Act
VII of
1934.

(ii) to the admission of any evidence recorded, whether such evidence was recorded before or after the said date in a trial under this Act.

¹See foot-note 2 on page 739, *ante*.

²Ben. Act VII of 1934 came into force on the 29th March, 1934.

(Sections 8—8B.)

8. (1) Commissioners trying an offence under this Act may, with a view to obtaining the evidence of any person supposed to have been directly concerned in, or privy to, the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor in the commission thereof.

Tender of
pardon.

(2) Where, in the case of any offence for the trial of which by Commissioners an order has been made under sub-section (1) of section 3, a pardon has, before the passing of such order, been tendered to and accepted by any person under section 337 of the Code, the provisions of sub-sections (2) and (3) of that section of the Code shall apply as if the accused person had been committed for trial to the Commissioners.

(3) For the purposes of sections 339 and 339A of the Code pardons tendered under sub-section (1) and sub-section (2) shall be deemed respectively to have been tendered under sections 338 and 337 of the Code.

¹8A. (1) In any trial by Commissioners appointed under this Act, the Commissioners may, if they think fit, order at any stage of the trial that the public generally or any particular person shall not have access to, or be or remain in, the room or building used for the trial.

Power to
exclude
persons or
public
from place
of trial.

(2) Where in the course of any such trial, the Advocate-General certifies in writing to the Commissioners that it is expedient in the interests of the public peace or safety, or of the peace or safety of any of the witnesses in the trial that public generally should not have access to, or be or remain in, the room or building used for the trial, the Commissioners shall order accordingly.

¹8B. (1) Where any accused, in a trial by Commissioners appointed under this Act, has by his voluntary act rendered himself incapable of appearing before the Commissioners or resists his production before them or behaves before them in a persistently disorderly manner, the Commissioners may, at any stage of the trial, by order in writing made after such inquiry as they may think fit, dispense with the attendance of such accused for such period as they may think fit, and proceed with the trial in his absence.

Power to
deal with
refractory
accused.

(2) Where a plea is required in answer to a charge from an accused whose attendance has been dispensed with under sub-section (1), such accused shall be deemed not to plead guilty.

(3) An order under sub-section (1) dispensing with the attendance of an accused shall not affect his right of being represented by a pleader at any stage of the trial, or of being present in person if he has become capable of appearing or appears before the Commissioners and undertakes to behave in an orderly manner.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no finding, sentence or order passed in a

Act V of
1898.

¹Sections 8A and 8B were inserted by sec. 4 of the Bengal Criminal Law Amendment Act, 1932 (Ben. Act XI of 1932).

(Sections 9—10.)

trial by Commissioners appointed under this Act shall be held to be illegal by any Court by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (1).

Special
rule of
evidence.

9. Notwithstanding anything contained in the Indian Evidence Act, 1872, when the statement of any person has been recorded by any Magistrate, such statement may be admitted in evidence in any trial before Commissioners appointed under this Act if such person is dead or cannot be found or is incapable of giving evidence, and the Commissioners are of opinion that such death, disappearance, or incapacity has been caused in the interests of the accused.

I of 1872.

Special
provisions
for record-
ing evi-
dence.

¹9A. (1) In any trial by Commissioners appointed under this Act, a Commissioner may dictate the evidence of any witness in narrative form to a stenographer or typist, who shall take down the same :

Provided that the Commissioners may cause any particular question or answer to be so taken down.

(2) The evidence taken down under sub-section (1), or a transcript or copy thereof, shall be signed by the Commissioners after they have corrected any clerical errors therein, and on such signature shall form part of the record.

(3) Notwithstanding anything contained in section 356 of the Code, where evidence is recorded in the manner provided in sub-sections (1) and (2) it shall not be necessary for the Commissioners to record any memorandum of such evidence.

Rule-
making
powers of
appropri-
ate Govern-
ment.

10. The ²[appropriate Government] may, by notification in the ³[*Official Gazette*], make rules consistent with this Act to provide for all or any of the following matters, namely :—

- (i) the times and places at which Commissioners appointed under this Act may sit ;
- (ii) the procedure of such Commissioners, including the appointment and powers of their President, and the procedure to be adopted in the event of any Commissioner being prevented from attending throughout the trial of any accused person ;
- (iii) the conduct of and the procedure at trials, the manner in which prosecutions before such Commissioners shall be conducted and the appointment and powers of persons conducting such prosecutions ;
- (iv) the execution of sentences passed by such Commissioners ;
- (v) the temporary custody or release on bail of persons referred to or included in any order made under sub-section (1) of section 3, and the transmission of records to the Commissioners ; and

¹Section 9A was inserted by sec. 12 of the Bengal Criminal Law Amendment Act, 1934 (Ben. Act VII of 1934).

²See foot-note 3 on page 739, *ante*.

³See foot-note 4 on page 739 *ante*.

Sections 11—25 and the First and Second Schedules.

- (vi) any matter which appears to the ¹[appropriate Government] to be necessary for carrying into effect the provisions of this Act relating or ancillary to trials before Commissioners.

11 to 22.—*Rep. by sec. 3 of the Bengal Criminal Law Amendment (Part Continuance) Act, 1930 (Ben. Act III of 1930).*

23. All rules made under this Act shall be published in the ²[Official Gazette], and on such publication shall have effect as if enacted in this Act. Publication of rules.

24, 25.—*Rep. by sec. 3 of the Bengal Criminal Law Amendment (Part Continuance) Act, 1930 (Ben. Act III of 1930).*

THE FIRST SCHEDULE.

(See sections 3 and 6.)

³[(1)] Any of the following offences, if in the opinion of the ¹[appropriate Government] there are reasonable grounds for believing that such offence has been committed by a member or a person controlled or instigated by a member, of any association of which the objects or methods include the commission of any of such offences, namely :—

(a) any offence punishable under any of the following sections of the Indian Penal Code, namely, sections ⁴[121, ⁵121A, 122, 123, 148, 216], 302, 304, 326, 327, 329, 332, 333, 385, 386, 387, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459, 460 and 506 ;

(b) any offence under the Explosive Substances Act, 1908 ;

(c) any offence under the Indian Arms Act, 1878 ;

(d) any attempt or conspiracy to commit, or any abetment of any of the above offences.

- ³(2) Any offence under the Indian Arms Act, 1878, or any attempt or conspiracy to commit, or any abetment of, such offence, if, in the opinion of the ¹[appropriate Government], there are reasonable grounds for believing that such offence, or such attempt, conspiracy or abetment, has been committed for the purpose of making, or assisting any person to make, unlawful gain by trafficking in arms or ammunition without a license under the said Act.

The Second Schedule.

Rep. by sec. 3 of the Bengal Criminal Law Amendment (Part Continuance) Act, 1930 (Ben. Act III of 1930).

¹See foot-note 3 on page 739, *ante*.

²See foot-note 4 on page 739, *ante*.

³The First Schedule was numbered as paragraph (1) of the First Schedule and to this Schedule as so numbered, paragraph (2) was added by sec. 6 of the Bengal Criminal Law (Arms and Explosives) Act, 1932 (Ben. Act XXI of 1932).

⁴These figures and letter were substituted for the figures "148" by sec. 5 of the Bengal Criminal Law Second Amendment Act, 1932 (Ben. Act XI of 1932).

Act XLV
of 1860.

VI of 1908.

XI of 1878.

